THE PEOPLES Antient and Just LIBERTIES ASSERTED, IN THE TRYAL OF

William Penn, and *William Mead*,

At the Sessions held at the *Old-Baily* in *London*, the first, third, fourth and fifth of *Sept.* 70. against the most Arbitrary procedure of that Court.

Isa. 10. 1, 2. *Wo unto them that Decree Unrighteous Decrees, and write grievousness, which they have prescribed; to turn away the Needy from Judgment, and to take away the right from the Poor,* &c.

Psal. 94. 20. *Shall the Throne of Iniquity have fellowship with thee which frameth mischief by a Law.*

Sic volo, sic jubeo, stat pro ratione voluntas.

Old-Baily, 1st. 3d. 4th, 5th of *Sept.* 1670.

London, Printed for *William Butler*, 1682.

To the Engliſh Reader.

IF *ever it were time to ſpeak, or write, 'tis now, ſo many ſtrange Occurrances, requiring both.*

How much thou art concerned in this enſuing Trial (*where not only the Priſoners, but the Fundamental Laws of* England) *have been moſt Arbitrarily Araigned: Read, and thou mayſt plainly judge.*

Liberty of Conſcience, *is counted a pretence for Rebellion, and* Religious Aſſemblies, Routs, *and* Riots; *and the* Defenders *of both, are by them reputed* Factious *and* Diſ-affected.

Magna Charta, *is Magna Far——with the* Recorder *of* London, *and to demand* right *an affront to the Court.*

Will *and* Power *are their great* Charter, *but to call for* Englands, *is a Crime: incurring the penalty of their* Bale-dock, *and* Naſty hole, nay, *the menace of a* Gag, *and* Iron Shackles *too.*

The Jury (though proper Judges) of Law and Fact) they would have over-ruled in both, as if their Verdict ſignified no more, than to echo back the illegal charge of the Bench; and becauſe their courage and honeſty did more than hold pace, with the threat and abuſe of thoſe, who ſate as Judges, (after two dayes and two nights reſtraint for a Verdict) in the end were fined and impriſoned for giving it.

O! what monſtrous and illegal proceedings are theſe? Who reaſonably can call his Coat his own? When Property is made ſubſervient to the Will and Intereſt of his Judges; *or, Who can truly eſteem himſelf a Free-man?* When all Pleas for Liberty are eſteemed Sedition, *and the Laws, that give, and maintain them, ſo many inſignificant pieces of formality.*

And what do they leſs than plainly tell us ſo who at Will and Pleaſure break open our Locks, rob our Houſes, raze our Foundations, impriſon our Perſons, and finally, deny us Juſtice to our relief; *as if they then acted moſt like Chriſtian men, when they were moſt barbarous, in ruining ſuch as are really ſo; and that no Sacrifice could be acceptable to God, as the deſtruction of thoſe, that moſt fear him.*

In ſhort, That the Conſcientious ſhould only be obnoxious, and the juſt

demand of our Religious Liberty, the reason why we should be denied our civil Freedom (as if to be a Christian and an English-man were inconsistent) and that so much solicitude and deep contrivance, should be imployed only to ensnare and ruin so many ten thousand conscientious Families) so eminently, industrious, serviceable and exemplary; *whilst Murders can so easily obtain pardons, Rapes be remitted, publick Uncleanness pass unpunished, and all manner of* Levity, Prodigality, Excess, Prophaneness *and* Atheism, *universally connived at, if not in some respect manifestly encouraged) cannot but be detestable abhorrent to every serious and honest mind.*

Yet that this lamentable state is true, and the present Project *in hand let* London's Recorder, *and* Canterburies Chaplain *be heard.*

The first in his publick Panegerick, upon the Spanish Inquisition, highly admiring the prudence of the Romish Church, in the erection of it as an excellent way, to prevent Schism, *which unhappy expression, at once passeth sentence, both against our fundamental Laws, and Protestant Reformation.*

The second in his printed Mercinary Discourse against Toleration, *asserting for a main Principle,* That it would be less injurious, to the Government, to dispence with Prophane and Loose Persons, than to allow a toleration to religious Dissenters: *It were to over-do the business, to say any more, where there is so much said already.*

And therefore to conclude, We cannot chuse but admonish all, as well Persecutors, *to relinquish their Heady, Partial, and Inhumane Prosecutions (as what will certainly issue in disgrace here, and inevitable condign punishment hereafter) as those who yet dare express their moderation (however out of fashion, or made the Brand of Fanatisism) not to be huff'd, or menaced out of that excellent temper, to make their parts and persons subservient to the base humors, and sinister designes of the biggest mortal upon Earth; but to revenge and obey the Eternal just God,* before whose great Tribunal all must render their accounts, and where he will recompence to every Person according to his works.

The Tryal of William Penn *and* William Mead.

AS there can be no Obſervation, where there is no Action; ſo its impoſſible, there ſhall be a judicious intelligence, without due Obſervation.

And ſince there can be nothing more reaſonable than a right information, eſpecially of *Publick Acts*; and well knowing, how induſtrious ſome will be, to miſ-repreſent this Trial to the diſadvantage of the Cauſe and Priſoners, it was thought requiſite, in defence of both, and for the ſatisfaction of the People, to make it more publick; nor can there be any buſineſs wherein the People of *England* are more concerned, than in that which relates to their civil and Religious Liberties, queſtioned in the Perſons above named, at the *Old Baily*, the firſt, third, fourth and fifth of *Sept.* 1670.

There being preſent on the Bench, as Juſtices:

Sam. Starling, Mayor,
John Howel, Recorder.
Tho. Bludworth, Alder.
William Peak, Alderm.
Richard Ford, Alderm.
John Robinſon, Alderm.
Joſeph Shelden, Alderm.
Richard Brown.
John Smith, } Sheriffs.
James Edwards, }

The Citizens of *London* that were ſummoned for Jurors, appearing, were impannelled, *viz.*

Cla. Call over the Jury.

Cry. Oyes, *Thomas Veer, Ed. Buſhel, John Hammond, Charles Milſon, Gregory Walklet, John Brightman, Wil. Plumſted, Hen. Henly, James Damask, Henry Michel, Wil. Lever, John Baily.*

The Form of the Oath.

You ſhall well and truly try, and true Deliverance make betwixt our Soveraign Lord the King, and the Priſoners at the Bar, according to your Evidence; So help you God.

The

The Indictment.

That *William Penn*, Gent. and *William Mead* late of *London* Linnen-Draper, with divers other Persons, to the Jurors unknown, to the number of three hundred, the 15th day of *August*, in the 22th year of the King, about eleven of the clock in the forenoon the same day, with Force and Arms, &c. in the Parish of St. *Bent Grace-Church*, in *Bridge-ward London*, in the street called *Grace-Church-Street*, unlawfully and tumultuously did assemble and congregate themselves together, to the disturbance of the Peace of the said Lord the King: and the aforesaid *William Penn* and *William Mead* together with other Persons, to the Jurors aforesaid unknown, then and there so assembled and congregated together; the aforesaid *William Penn*, by agreement between him and *William Mead*, before made; and by abetment of the aforesaid *William Mead*, then and there, in the open street, did take upon himself to preach and speak, and then, and there, did preach and speak, unto the aforesaid *William Mead*, and other persons there, in the street aforesaid, being assembled and congregated together, by reason whereof a great concourse and tumult of People in the Street aforesaid, then and there, along time did remain and continue, in contempt of the said Lord the King, and of his Law; to the great disturbance of his Peace, to the great terror and disturbance of many of his Liege people and Subjects, to the ill example of all others, in the like case Offenders, and against the Peace of the said Lord the King, his Crown and Dignity.

What say you, *William Penn*, and *William Mead*, are you guilty, as you stand indicted, in manner and form, as aforesaid, or not guilty.

Pen. It is impossible, that we should be able to remember the Indictment verbatim, and therefore we desire a Copy of it as is customary in the like occasions.

Rec. You must first plead to the Indictment, before you can have a Copy of it.

Pen I am unacquainted with the formality of the Law, and therefore, before I shall answer directly, I request two things of the Court. First, that no advantage may be taken against me, nor I deprived of any benefit, which I might otherwise have received. Secondly, that you will promise me a fair hearing, and liberty of making my defence.

Court. No advantage shall be taken against you; you shall have liberty, you shall be heard.

Pen

Pen. Then I plead not-guilty in manner and form.

Clar. What saist thou William Mead, *Art thou guilty in manner and form, as thou standst indicted, or not guilty.*

Mead. I shall desire the same liberty as is promised to *William Penn.*

Court. You shall have it.

Mead. Then I plead not guilty in manner and form.

The Court adjourned until the afternoon.

Cryer. O yes, *&c.*

Cla. Bring William Penn *and* William Mead *to the Bar.*

Obser. The said Prisoners were brought, but were set aside, and other business prosecuted. Where we cannot choose but observe, that it was the constant and unkind practises of the Court to the Prisoners, to make them wait upon the Tryals of Fellons and Murderers, thereby designing in all probability, *both to affront and tire them.*

After five hours attendance the Court broke up, and adjourned to the third instant.

The third of *September*, 1670. the Court sate.

Cry. O yes, *&c.*

Cla. Bring *William Penn* and *William Mead*, to the Bar.

Mayor, Sirrah, Who bid you put off their Hats? put on their Hats again.

Obser. Whereupon one of the Officers putting the Prisoners Hats upon their heads (pursuant to the Order of the Court) brought them to the Bar.

Record. Do you know where your are?

Pen. Yes.

Rec. Do you not know it is the Kings Court?

Pen. I know it to be a Court, and, I suppose it to be the Kings Court.

Rec. Do you know there is respect due to the Court?

Pen. Yes.

Rec. Why do you not pay it then?

Pen. I do so.

Rec Why do you not put off your Hat then?

Pen. Because I do not believe that to be any respect.

Rec. Well, the Court sets forty Marks a piece upon your Heads as a Fine for your contempt of the Court.

Pen.

Penn. I desire it might be observed, that we came into the Court with out our Hats off, (that is, taken off) and if they have been put on since, it was by order from the Bench; and therefore not we but the Bench should be fined.

Mead, I have a Question to ask the Recorder, Am I fined also?

Rec. Yes.

Mead. I desire the Jury, and all people to take notice of this injustice of the Recorder, who spake not to me to Pull off my Hat, and yet hath he put a Fine upon my Head. O fear the Lord, and dread his Power, and yield to the guidance of his holy Spirit; for he is not far from every one of you.

The Jury sworn again.

Obser. J. Robinson Lieutenant of the *Tower*, disingeniously objected against *Edw. Bushel*, as if ye had not kist the Book, and therefore would have him sworn again; though indeed, it was on purpose, to have made use of his tenderness of Conscience in avoiding reiterated Oaths, to have put him by his being a Jury-man, apprehending him to be a person, not fit to answer their arbitrary ends.

The Clark read the Indictment, as aforesaid.

Cla. Cryer, Call *James Cook*, into the Court, give him his Oath.

Cl. James Cook, lay your hand upon the Book," The Evidence "you shall give to the Court, betwixt our Soveraign the King, and "the Prisoners at the Bar, shall be the Truth, and the whole Truth, "and nothing but the Truth, so help you God, *&c.*

Cook, I was sent for, from the Exchange, to go and disperse a Meeting in Gracious-street, *where I saw Mr.* Penn *speaking to the People, but I could not hear what he said, because of the noise, I endeavoured to make way to take him, but I could not get to him for the crowd of people, upon which Captain* Mead *came to me, about the Kennel of the Street, and desired me to let him go on; for when he had done, he would bring Mr.* Penn *to me.*

Court. What number do you think might be there?

Cook. About three or four hundred People.

Court. Call Richard Read, *give him his Oath.*

Read being sworn was askt, *What do you know concerning the Prisoners at the Bar?*

Read, My Lord, I went to Gracious-Street, *where I found a great crowd*

crowd of People and I heard Mr. Penn *preach to them, and I saw Captain* Mead *speaking to Lieutenant* Cook, *but what he said I could not tell.*

Mead. What did *William Penn* say?

Read. There was such a great noise, that I could not tell what he said.

Mead, Jury observe this Evidence, he saith he heard him preach, and yet saith, He doth not know what he said.

Jury, take notice, he swears now a clean contrary thing, to what he swore before the *Mayor*, when we were committed: for now he swares that he saw me in *Gracious-Street*, and yet swore before the *Mayor*, when I was committed, that he did not see me there. I appeal to the *Mayor* himself if this be not true; but no answer was given.

Cour. What number do you think might be there?

Read. About four or five hundred.

Pen. I desire to know of him what day it was?

Read. The 14th day of *August*.

Pen. Did he speak to me, or let me know he was there; for I am very sure I never saw him.

Cla. Cryer, *Call* ——— *into the Court.*

Cour. Give him his Oath.

——— My Lord, I saw a great number of people, and Mr. *Penn* I suppose was speaking; I see him make a motion with his hands, and heard some noise, but could not understand what he said; but for Captain *Mead*, I did not see him there.

Rec. What say you Mr. *Mead*? Were you there?

Mead, It is a Maxime in your own Law, *Nemo tenetur accusare seipsum*, which if it be not true Latine, I am sure it is true *English*, *That no man is bound to accuse himself*: And why dost thou offer to ensnare me with such a question? Doth not this shew thy malice? Is this like unto a Judge, that ought to be Councel for the Prisoner at the Bar?

Rec. Sir, hold your Tongue, I did not go about to ensnare you.

Pen. I desire we may come more close to the point, and that silence be commanded in the Court.

Cry. O yes, All manner of Persons keep Silence upon pain of Imprisonment ——— *Silence in the Court.*

Pen. We confess our selves to be so far from recanting, or de-

 clining

clining to vindicate the assembling of our selves, to Preach, Pray, or Worship the Eternal, Holy, Just God, that we declare to all the World, that we do believe it to be our indispensable duty, to meet incessantly upon so good an account; nor shall all the Powers upon Earth be able to divert us from reverencing and adoring our God, who made us.

Brown, you are not here for Worshipping God, but for breaking the Law; You do your selves a great deal of wrong in going on in that discourse.

Pen. I affirm I have broken no Law, nor am I guilty of the Indictment that is laid to my charge: and to the end, the Bench, the Jury, and my self, with these that hear us, my have a more direct understanding of this procedure, I desire you would let me know by what Law it is you prosecute me, and upon what Law you ground my Indictment.

Rec. Upon the Common-Law?

Pen. Where is that Common-Law.

Rec. You must not think that I am able to run up so many years, and over so many adjudged Cases, which we call Common Law, to answer your curiosity.

Pen. This Answer I am sure is very short of my Question, for if it be Common, it should not be so hard to produce.

Rec. Sir, will you plead to your Indictment?

Pen. Shall I plead to an Indictment, that hath no foundation in Law? if it contain that Law you say I have broken, why should you decline to produce that Law, since it will be impossible for the *Jury* to determine, or agree to bring in their Verdict, who have not the Law produced, by which they should measure the truth of this Indictment, and the guilt, or contrary of my Fact.

Rec. You are a saucy Fellow, speak to the Indictment.

Pen. I say, it is my place to speak to matter of Law; I am arraigned a Prisoner, my Liberty,
which is next to Life it self, is now concerned; you are many Mouths and Ears against me, and if I must not be allowed to make the best of my Case, it is hard: I say again,
unless you shew me, and the People, the Law you ground your Indictment upon, I shall take it for granted, your proceedings are meerly Arbitrary.

Observe. At this time several upon the Bench urged hard upon the Prisoner to bear him down.

Rec.

Rec. The Queſtion is whether you are guilty of this Indictment?

Pen. The Queſtion is not whether I am guilty of this Indictment, but whether this Indictment be legal: it is too general and imperfect an Anſwer, to ſay it is the Common Law, unleſs we knew both where, and what is it; For where there is no Law, there is no Tranſgreſſion; and that Law, which is not in being, is ſo far from being Common, that it is no Law at all.

Rec. You are an impertinent Fellow, Will you teach the Court what Law is? Its Lex non ſcripta, *that which many have ſtudied thirty or forty years to know, and would you have me tell you in a moment.*

Pen. Certainly, if the Common Law be ſo hard to be underſtood, its far from being very Common; but if the Lord *Cook* in his Inſtitutes be of any conſideration; he tells us, That Common Law is Common Right, and that Common Right is the great Charter Priviledges, Confirmed 9 *Hen.* 3 29. 25 *Edw.* 1. 1. 2 *Edw.* 3. 8. *Cook Inſt.* 2. p. 56.

Rec. Sir, you are a troubleſom Fellow, and it is not for the honour of the Court to ſuffer you to go on.

Pen. I have asked but one Queſtion, and you have not anſwered me; though the Rights and Priviledges of every *Engliſh*-man be concerned in it.

Rec. If I ſhould ſuffer you to ask Queſtions till to morrow morning you would be never the wiſer.

Pen. That is according as the Anſwers are.

Rec. Sir, We muſt not ſtand to hear you talk all Night.

Pen. I deſign no affront to the Court, but to be heard in my juſt Plea; and I muſt plainly tell you, that if you will deny me *Oyer* of that Law, which you ſuggeſt I have broken, you do at once deny me an acknowledged right, and evidence to the whole World your reſolution to ſacrifice the Priviledges of Engliſh-men, to your Siniſter and Arbitrary deſigns.

Rec. Take him away: My Lord, if you take not ſome courſe with this peſtilent Fellow, to ſtop his Mouth, we ſhall not be able to do any thing to Night.

May. Take him away, take him away, turn him into the Bale-dock.

Pen. Theſe are but ſo many vain Exclamations; Is this Juſtice or true Judgment? Muſt I therefore be taken away becauſe I plead for the Fundamental Laws of *England*? However; this I leave upon

on your Conſciences, who are of the Jury (and my ſole Judges) that if theſe Antient Fundamental Laws, which relate to Liberty and Property, (and are not limited to particular Perſwaſions in matters of Religion) muſt not be indiſpenſibly maintained and obſerved, who can ſay he hath right to the Coat upon his back? Certainly our Liberties are openly to be invaded, our Wives to be raviſhed, our Children ſlaved, our Families ruined, and our Eſtates led away in Triumph, by every Sturdy Beggar and Malicious Informer, as their Trophies, but our (pretended) forfeits for Conſcience ſake: the Lord of Heaven and Earth will be Judge between us in this matter.

Rec. Be ſilent there.

Penn. I am not to be ſilent in a Caſe wherein I am ſo much concerned, and not only my ſelf, but many ten thouſand Families beſides.

Obſer. They having rudely haled him into the Baledock, *William Mead* they left in Court, who ſpake as followeth.

Mead, You men of the *Jury*, here I do now ſtand, to anſwer to an Indictment againſt me, which is a bundle of Stuff full of Lyes and Falſhoods; For therein I am accuſed, that I met *Vi & Armis, Illicite & Tumultuoſe:* Time was, when I had freedom to uſe a carnal Weapon, and then I thought I feared no man; but now I fear the Living God, and dare not make uſe thereof, nor hurt any man; nor do I know I demeaned my ſelf as a tumultuous perſon. I ſay I am a peaceable man, therefore it is a very proper Queſtion what *William Penn* demanded in this Caſe, An *O Y E R* of the Law, on which our Indictment is grounded.

Rec. I have made anſwer to that already.

Mead, Turning his face to the *Jury* ſaid, You men of the Jury, who are my Judges, if the Recorder will not tell you what makes a Riot, a Rout, or an unlawful Aſſembly, *Cook*, he that once they called the Lord *Cook*, tells us what makes a Riot, a Rout, and an unlawful Aſſembly —— A Riot is when three, or more, are met together to beat a man, or to enter forcibly into another mans Land, to cut down his Graſs, his Wood, or break down his Pales.

Obſer. Here the Recorder interrupted him, and ſaid, I thank you Sir, that you will tell me what the Law is, ſcornfully pulling off his Hat.

Mead.

Mead, Thou mayſt put on thy Hat, I have never a Fee for the now.

Brown, *He talkes at random, one while an* Independent, *another while ſome other Religion, and now a* Quaker, *and next a* Papiſt.

Mead, Turpe eſt doctori cum culpa redarguit ipſum.

May. You deſerve to have your Tongue cut out.

Rec. If you diſcourſe on this manner, I ſhall take occaſion againſt you.

Mead, Thou didſt promiſe me, I ſhould have fair Liberty to be heard. Why may I not have the Privileuge of an Engliſhman? I am an Engliſh man, and you might be aſhamed of this dealing.

Rec. I look upon you to be an Enemy to the Laws of England, *which ought to be obſerved and kept, nor are you worthy of ſuch Priviledges as others have.*

Mead, The Lord is Judge between me and thee in this matter.

Obſer. Upon which they took him away into the Bale-dock, and the Recorder proceeded to give the Jury their charge, as followeth.

Rec. You have heard what the Indictment is, it is for preaching to the people, and drawing a tumultuous Company after them; and Mr. *Penn* was ſpeaking; if they ſhould not be diſturbed, you ſee they will go on; there are three, or four Witneſſes, that have proved this, that he did preach there, that Mr. *Mead* did allow of it; after this, you have heard by ſubſtantial Witneſſes what is ſaid againſt them: Now we are upon the matter of fact, which you are to keep to, and obſerve, as what hath been fully ſworn at your peril.

Obſer. The Priſoners were put out of the Court, into the Bale-dock, and the charge given to the Jury in their abſence, at which *W. P.* with a very raiſed Voice, it being a conſiderable diſtance from the Bench, ſpake,

Pen. I appeal to the Jury, who are my Judges, and this great Aſſembly, whether the proceedings of the Court are not moſt Arbitrary, and void of all Law, in offering to give the Jury their Charge in the abſence of the Priſoners; I ſay, it is directly oppoſite to, and deſtructive of the undoubted right of every Engliſh Priſoner, as *Cook* in the 2 Inſt. 29. on the chap. of *Magna Charta* ſpeaks.

Obſer.

Obſer. The Recorder being thus unexpectedly laſht for his extra-judicial proceedure, ſaid with an inraged ſmile.

Rec. Why, ye are preſent, you do hear, do you not?

Pen. No thanks to the Court, that commanded me into the Bale-dock; and you of the *Jury* take notice, that I have not been heard, neither can you legally depart the Court, before I have been fully heard, having at leaſt ten or twelve material points to offer, in order to invalid their Indictment.

Rec. Pull that Fellow down, pull him down.

Mead, Are theſe according to the Rights and Priviledges of Engliſh-men, that we ſhould not be heard, but turned into the Bale-dock, for making our defence, and the *Jury* to have their Charge given them in our abſence? I ſay theſe are barbarous and unjuſt proceedings.

Rec. Take them away into the Hole; to hear them talk all Night as they would, that I think doth not become the honour of the Court; and I think you (i. e. the Jury) your ſelves would be tired out, and not have patience to hear them.

Obſerve, The *Jury* were commanded up to agree upon their Verdict, the Priſoners remaining in the ſtinking Hole; after an hour and halfs time eight came down agreed, but four remained above, the Court ſent an Officer for them, and they accordingly came down: The Bench uſed many unworthy Threats to the four that diſſented; and the Recorder, addreſſing himſelf to *Buſhel,* ſaid, Sir, You are the cauſe of this diſturbance, and manifeſtly ſhew your ſelf an Abettor of Faction, I ſhall ſet a Mark upon you Sir.

J. Robinſon, Mr. *Buſhel,* I have known you near this fourteen years; you have thruſt your ſelf upon this *Jury,* becauſe you think there is ſome ſervice for you; I tell you, You deſerve to be indicted more than any man that hath been brought to the Bar this day.

Buſh. No Sir *John,* There were threeſcore before me, and I would willingly have got off, but could not.

Bloodw. I ſaid when I ſaw Mr. *Buſhel,* what I ſee is come to paſs; for I knew he would never yield. Mr. *Buſhel,* we know what you are.

May. Sirrah, You are an impudent Fellow, I will put a Mark upon you.

Obſer. They uſed much menacing Language, and behaved themſelves very imperiouſly to the Jury, as perſons not more void of Juſtice

Juſtice than ſober Education: After this barbarous uſage, they ſent them to conſider of bringing in their Verdict, and after ſome conſiderable time they returned to the Court. Silence was called for, and the Jury called by their names.

Cl. Are you agreed upon your Verdict?

Jur. Yes.

Cl. Who ſhall ſpeak for you?

Ju. Our Fore-man.

Cl. Look upon the Priſoners at the Bar; How ſay you? Is *William Penn* guilty of the matter whereof he ſtands indicted in manner and form, or not guilty?

Fore-m. Guilty of ſpeaking in *Gracious-ſtreet*.

Court. Is that all?

Fore-m. That is all I have in commiſſion.

Rec. You had as good ſay nothing.

May. Was it not an unlawful Aſſembly? you mean he was ſpeaking to a Tumult of people there?

Fore-m. My Lord, this was all I had in Commiſſion.

Obſer. Here ſome of the *Jury* ſeemed to buckle to the Queſtions of the Court, upon which *Buſhel*, *Hammond*, and ſome others oppoſed themſelves, and ſaid, They allowed of no ſuch word, as an unlawful Aſſembly in their Verdict; at which the *Recorder*, *Mayor*, *Robinſon*, and *Bloodworth* took great occaſion to vilifie them with moſt approbrious Language; and this Verdict not ſerving their turns, the Recorder expreſſed himſelf thus.

Rec. The Law of *England* will not allow you to depart till you have given in your Verdict.

Jury, We have given in our Verdict, and we can give in no other.

Rec. Gentlemen, you have not given in your Verdict, and you had as good ſay nothing; therefore go and conſider it once more, that we may make an end of this troubleſome buſineſs.

Jury We deſire we may have Pen, Ink, and paper.

Obſer. The Court adjourns for half an hour; which being expired, the Court returns, and the Jury not long after.

The Priſoners were brought to the Bar, and the Juries names called over.

Cal. Are you agreed of your Verdict?

Jur. Yes.

Cla. Who ſhall ſpeak for you?

Jury, Our Fore-man.

Cla.

Cla. What say you? look upon the Prisoners; Is *William Penn* guilty in Manner and Form, as he stands indicted, or not guilty?

Fore-m. Here is our Verdict, Holding forth a piece of Paper to the Clark of the Peace, which follows,

WE the Jurors, hereafter named, do find *William Penn* to be guilty of Speaking or Preaching to an Assembly, met together in *Grations Street*, the 14th of *August* last, 1670. and that *William Mead* is not guilty of the said Indictment.

Fore-m.	*Thomas Veer*,	*Charles Milson*,
	Edward Bushel.	*Gregory Walklet*,
	John Hammond,	*John Baily*,
	Henry Henley,	*William Lever*,
	Henry Michel,	*James Damask*,
	John Brightman,	*Wil. Plumsted.*

Obser. This both *Mayor* and *Recorder* resented at so high a rate, that they exceeded the bounds of all reason and civility.

May. What will you be led by such a silly Fellow as *Bushel*; an impudent canting Fellow? I warrant you, you shall come no more upon Juries in hast; you are a Fore-man indeed, addressing himself to the fore-man, I thought you had understood your place better.

Rec. Gentlemen, you shall not be dismist till we have a Verdict that the Court will accept; and you shall be lockt up, without Meat, Drink, Fire, and Tobacco; you shall not think thus to abuse the Court; we will have a Verdict, by the help of God, or you shall starve for it.

Pen. My Jury, who are my Judges, ought not to be thus menaced, their Verdict should be Free, and not Compelled; the Bench ought to wait upon them, but not Foreſtal them; I do desire that Justice may be done me, and that the Arbitrary Resolves of the Bench may not be made the measure of my Juries Verdict.

Rec. Stop that prating fellows Mouth, or put him out of the Court.

May. You have heard that he Preacht, that he gathered a company of tumultuous people, and that they do not only disobey the Martial power, but the Civil also.

Pen. It is a great Mistake, we did not make the Tumult, but they that interrupted us! The Jury cannot be so ignorant, as to think, that we met there, with a design to disturb the civil peace,

since (1st) we are by force of arms kept out of our lawful House, and met as near it in the Street, as their Souldiers would give us leave: And (2d) because it was no new thing, (nor with the Circumstances expreſt in the Indictment, but what was uſual and cuſtomary with us; 'tis very well known that we are a peaceable people, and cannot offer violence to any man.

Obſerv. The Court being ready to break up, and willing to huddle the priſoners to their Goal, and the Jury to their Chamber, *Pen* ſpoke as follows.

Pen. The agreement of twelve men is a Verdict in Law, and ſuch a one being given by the Jury, *I require the Clark of the Peace to record it, as he will anſwer it at his peril*: And if the Jury bring in another Verdict contradictory to this, I affirm they are perjured men in Law. (And looking upon the Jury ſaid) You are Engliſh men mind your priviledge, give not away your Right.

Ruſh. &c. Nor will we ever do it.

Obſerv. One of the Jury-men pleaded indiſpoſition of Body, and therefore deſired to be diſmiſt.

May. You are as ſtrong as any of them, ſtarve them, and hold your principles.

Rec. Gentlemen, you muſt be content with your hard fate, let your patience overcom it, for the Court is reſolved to have a Verdict, and that before you can be diſmiſt.

Jur. We are agreed, we are agreed, we are agreed.

Obſerv. The Court ſwore ſeveral perſons, to keep the *Jury* all night, without Meat, Drink, Fire, or any other accommodation; they had not ſo much as a Chamber pot, though deſired.

Cry. O Yes. &c.

Obſer. The Court adjourns till 8 of the Clock next morning (being the fourth inſtant, Vulgarly called Sunday) at which time the priſoners were brought to the Bar, the Court ſat, and the *Jury* called in to bring in their Verdict.

Cry. OYes. &c.——Silence in the Court upon Pain of Impriſonment.

The Juryes names called over.

Cla. Are you agreed upon your Verdict?

Jur. Yes.

Cl. Who ſhall ſpeak for you?

Jury Our Fore-man.

Cla. What ſay you? Look upon the priſoners at the Bar, Is

W. Pen guilty of the matter whereof he ſtands indicted in manner and form as aforeſaid, or not guilty?

Foreman, William Pen is guilty of ſpeaking in *Gratious-ſtreet.*

May. To an unlawful Aſſembly?

Buſh. No my Lord, we give no other Verdict, than what we gave laſt night; we have no other Verdict to give.

May. You are a factious fellow, I'le take a courſe with you.

Bloodw. I knew Mr. *Buſhel* would not yield.

Buſh. Sir *Tho* I have done according to my Conſcience.

May. That Conſcience of yours would cut my Throat.

Buſh. No my Lord it never ſhall.

May. But I will cut yours ſo ſoon as I can.

Rec. He has inſpired the Jury, he has the ſpirit of divination methinks I feel him; I will have a poſitive Verdict, or you ſhall ſtarve for it.

Pen. I deſire to ask the Recorder one Queſtion; Do you allow of the Verdict given of *William Mead*?

Rec. It cannot be a Verdict, becauſe you are indicted for a Conſpiracy, and one being found not guilty, and not the other, it could not be a Verdict.

Pen. If *Not guilty* be not a Verdict, then you make of the *Jury* and *Magna Charta* but a meer Noſe of Wax.

Mead. How! Is *Not guilty* no Verdict.

Rec. No, 'tis no Verdict.

Pen. I affirm that the conſent of a Jury, is a Verdict in Law; and if *W. M.* be not guilty, conſequently follows, that I am clear ſince you have indicted us of a Conſpiracy, and I could not poſſibly conſpire alone.

Obſer. There were many Paſſages, that could not be taken, which paſt between the Jury and the Court. The Jury went up again, having received a freſh charge from the Bench, if poſſible to extort an unjuſt Verdict.

Cry. O yes, &c. Silence in the Court.

Court, Call over the Jury ——Which was done.

Clark, What ſay you? Is *William Penn* guilty of the matter whereof he ſtands indicted, in manner and form aforeſaid, or not guilty?

Fore-m. Guilty of Speaking in *Gratious-ſtreet.*

Rec. What is this to the purpoſe? I ſay I will have a Verdict. And ſpeaking to *Mr. Buſhel* ſaid, You are a Factious Fellow; I will

ſet

ſet a Mark upon you; and whilſt I have any thing to do in the City, I will have an eye upon you.

May. Have you no more wit than to be led by ſuch a pitiful Fellow? I will cut his Noſe.

Pen. It is intolerable that my Jury ſhould be thus menaced; Is this according to the Fundamental Law? Are not they my proper Judges by the Great Charter of *England*? What hope is there of ever having Juſtice done when *Jurys* are threatened, and their Verdicts rejected? I am concerned to ſpeak, and grieved to ſee ſuch Arbitrary proceedings. *Did not the Lieutenant of the* Tower *render one of them worſe than a Felon*? And do you not plainly ſeem to condemn ſuch for factious Fellows, who anſwer not your ends? Unhappy are thoſe Juries, who are threatned to be fined, and ſtarved, and ruined, if they give not in their Verdicts contrary to their Conſciences.

Rec. My Lord, you muſt take a courſe with that ſame Fellow.

May. Stop his Mouth; Jayler bring Fetters and Stake him to the Ground.

Pen. Do your pleaſure, I matter not your fetters.

Rec. Till now I never underſtood the reaſon of the Policy and Prudence of the Spaniards, *in ſuffering the Inquiſition among them: And certainly it will never be well with us, till ſomething like the Spaniſh Inquiſition be in* England.

Obſer. The Jury being required to go together, to find another Verdict, and ſteadfaſtly refuſing it (ſaying they could give no other Verdict than what was already given) the Recorder in great Paſſion was running off the Bench, with theſe words in his Mouth. I proteſt I will ſit here no longer to hear theſe things. At which the Mayor calling, Stay, ſtay, he returned, and directed himſelf unto the Jury, and ſpeak as followeth.

Rec. Gentlemen, we ſhall not be at this paſs always with you; you will find the next Seſſions of Parliment, there will be a Law made, that thoſe that will not conform ſhall not have the Protection of the Law. Mr. *Lee, draw up another Verdict, that they may bring it in ſpecial.*

Lee, I cannot tell how to do it.

Jur. We ought not to be returned, having all agreed, and ſet our hands to the Verdict.

Rec. Your Verdict is nothing, you play upon the Court; I ſay you ſhall go together, and bring in another Verdict, or you ſhall ſtarve; and I will have you Carted, about the CITY, *as in* Edward *the thirds time.*

For-m. We have given in our Verdict, and all agreed to it, and if we give in another, it will be a force upon us to save our lives.

May. Take them up.

Offic. My Lord they will not go up.

Obser. The Mayor spoke to the Sheriff, and he came off his seat, and said.

Sher. Come, Gentlemen, you must go up; you see I am commanded to make you go.

Obser. Upon which the Jury went up; and several sworn to keep them without any Accommodation aforesaid, till they brought in their Verdict.

Cry. O yes, &c. The Court adjourns till to morrow morning at seven of the clock.

Obser. The prisoners were remanded to *Newgate*, where they remained till next morning, and then were brought unto the Court, which being sate, they proceeded as followeth.

Cry. O yes, &c.——Silence in the Court upon pain of imprisonment.

Cla. Set *William Penn* and *William Mead* to the Bar. Gentlemen of the Jury answer to your Names, *Tho. Veer, Edm. Bushel, John Hammond, Henry Henly, Henry Michel, John Brightman, Charles Wilson, Gregory Walklet, John Baily, William Leaver, James Damask, William Plumstead,* Are you all agreed of your Verdict?

Jury. Yes.

Cla. Who shall speak for you?

Jur. Our Fore-man.

Cla. Look upon the prisoners. What say you; Is *William Penn* guilty of the matter whereof he stands indicted, in manner and form, &c. or not guilty?

For-m. You have there read in writing already our Verdict in writing, and our hands subscribed.

Obser. The Clark had the paper, but was stopt by the Recorder from reading of it; and he commanded to ask for a positive Verdict.

Fore-m. If you will not accept of it, I desire to have it back again.

Cour. That Paper was no Verdict, and there shall be no advantage taken against you by it.

Cla. How say you? Is *William Penn* guilty, &c. or not guilty?

Fore-

Fore-m. Not guilty.

Ct. How say you? Is *William Mead* guilty, &c. or not guilty?

Fore-m. Not guilty.

Cl. Then harken to your Verdict, you say, that *William Penn* is not guilty in manner and form as he stands indicted; you say that *William Mead* is not guilty in manner and form as he stands indicted, and so you say all.

Jur. Yes, we do so.

Obser. The Bench being unsatisfied with the Verdict, commanded that every person should distinctly answer to their names, and give in their Verdict, which they unanimously did, in saying, *Not guilty*, to the great satisfaction of the Assembly.

Recorder. I am sorry, Gentlmen, you have followed your own judgments and opinions, rather than the good and wholsom advice, which was given you; God keep my life out of your hands; but for this the Court fines you forty Marks a man, and Imprisonment till paid: At which *Penn* stept up towards the Bench, and said.

Pen. I demand my liberty, being freed by the *Jury*.

May. No, you are in for your Fines.

Pen. Fines, for what?

May. For contempt of the Court.

Pen. I ask, if it be according to the Fundamental Laws of *England*, that any English men should be fined or amerced, but by the judgment of his Peers or *Jury*? since it expresly contradicts the fourteenth and twenty ninth Chap. of the *Great Charter* of *England* which say, No Freeman ought to be amerced, but by the Oath of good and lawful men of the Vicinage.

Rec. Take him away, Take him away, Take him out of the Court.

Pen. I can never urge the Fundmental Laws of *England*, but you cry, Take him away, take him away, But 'tis no wonder, *since the Spanish Inquisition hath so great a place in the Recorder's heart*, God Almighty who is just will judge you all for these things.

Obser. They haled the Prisoners to the Bale-dock, and from thence sent them to *Newgate*, for non payment of their Fines; and so were their *Jury*.

As

An Appendix, *by way of* Defence *for the* Priſoners, *or what might have been offered againſt the Indictment, and illegal proceedings of the Court thereon, had they not violently over-rul'd and ſtopp'd them.*

UPon a ſober diſquiſition into ſeveral parts of the Indictment we find it ſo wretchedly defective, as if it were nothing elſe but a meer compoſition of Error, rather calculated to the malicious deſigns of the Judges, than to the leaſt verity of fact committed by the Priſoners.

To prove this, what we ſay, will be a main help to diſcover the Arbitrary proceedings of the Bench in their frequent Menaces to the Jury; as if it were not much their Buſineſs to try, ex to condemn the Priſoners; and that not ſo much for any fact they had committed, as what the Court would have ſuggeſted to the Jury to have been their Fact.

Sect. 1. It is the conſtant Common Law of *England, That no man ſhould be taken, Impriſoned, Amerced, Deſeized of his Freehold, of his Liberties, or free Coſtoms, but by the Judgment of his Peers, which are vulgarly called a Jury, from* Jurare, *becauſe they are ſworn to do Right.*

Sect. 2. The only aſſiſtance that is given the Jury, in order to a Verdict is.

Firſt, The *Evidence* given of the Fact committed, by the Perſon indicted.

Secondly, The knowledge of that Law, Act, or Statute the indictment is grounded upon, and which the Priſoners are ſaid to have tranſgreſſed.

Sect. 3. We ſhall neglect to mention here, how much they were deprived, of that juſt advantage the ancient equal Laws of *England* do allow; deſigning it for a concluſion of the whole, and ſhall only ſpeak here to matter of Fact and Law.

Sect. 4. The Evidence, you have read in the Tryal, the utmoſt import of which, is no more than this; That *William Penn* was ſpeaking in *Gracious-Street*, to an Aſſembly of people, but knew not what he ſaid, which is ſo great a contradiction, as he that runs

may

may read it; for no man can ſay another man preaches, and yet underſtand not what he ſaith; he may conjecture it, but that is a lame evidence in Law; it might as well have been ſworn, That he was ſpeaking of Law, Phyſick, Trade, or any other matter of civil concernment. Beſides, there is no Law againſt Preaching what is truth, whether it be in the Street, or in any other place; nor is it poſſible, that any man can truly ſwear, that he Preacht Sedition, Hereſie, &c. unleſs he ſo heard him, that he could tell what he ſaid.

Sect. 5. The Evidence further ſaith, That *W. Mead* was there, *but till being in Gracious-Street be a fault, and hearing a man ſpeak the witneſs knows not what, be contrary to Law*, the whole Evidence is uſeleſs, and impertinent; but what thay want of that, thay endeavour to ſupply with Indictment; whoſe parts we proceed to conſider.

Exceptions againſt the Indictment.

Sect. 6. It ſaith, That the priſoners [*were met upon the* 15*th day of Auguſt*, 1670] whereas their own Evidence affirms it to be upon the 14th day of *Auguſt*, 70.

Sect. 7. [*That they met with force and Arms*] which is ſo great a Lye, that the Court had no better cover for it, than to tell the Jury, it was only a piece of Form, urging that the man tried for clipping of money this preſent Seſſions had the ſame words uſed in his Indictment

But that this Anſwer is too ſcanty, as well as it was too weak to prevail with the Jury; we deſire it may be conſidered, that the ſame words may be uſed more of courſe, and out of form at one time, than at another; And though we grant they can have little force with any Jury in a Clippers caſe, for meer Clipping; yet they are words that give ſo juſt a ground of jealouſie, nay, that carry ſo clear an Evidence of illegality where they are truly proved and affirmed of any Meeting, as that they are the proper Roots from whence do ſpring thoſe Branches which render an Indictment terrible, and an Aſſembly truly the terror of the people.

Sect. 8. [*Unlawful, and tumultuouſly to diſturb the peace,*] which as true, as whats ſaid before, (that is, as falſe) this will evidently appear to all that conſider how lawful it is to aſſemble, with no other deſign than to worſhip God, and their calling a lawful Aſſembly an unlawful one, no more makes it ſo, than to ſay Light is darkneſs, black is white, concludes ſo impudent a falſity true.

In

In ſhort, becauſe to worſhip God can never be a crime, no Meeting or Aſſembly, deſigning to worſhip God, can be unlawful. Such as go about to prove an unlawful Aſſembly, muſt prove theſe Aſſemblers intent not to worſhip God, but that no man can do, becauſe no man can know another mans intentions, and therefore it is impoſſible that any ſhould Prove ſuch an Aſſembly unlawful. That is properly an unlawful Aſſembly, according to the definition of the law, when ſeveral perſons are met together, with deſign to uſe violence and to do miſchief; but that Diſſenters meet with no ſuch intention, is manifeſt to the whole world, therefore their Aſſemblies are not unlawful; he that hath only right to be worſhipped, which is God, hath only right to inſtitute how he will be worſhipped; and ſuch as worſhip him in that way they apprehend him to have inſtituted, are ſo far from being unlawful Aſſemblers, that therein they do but expreſs the duty they owe to God.

[*Tumultuouſly*] Imports, as much as Diſorderly, or an Aſſembly full of Noiſe, Buſtle, and Confuſion, uſing force and violence, to the injury of perſons, Houſes, or Grounds. But whether Religious Diſſenters, in their peaceable Meetings, therein deſiring, and ſeeking nothing more than to expreſs that duty they owe to God Almighty, be a Tumultuous action, or meeting in the ſence expreſt (and which is the very definition of the Law) will be the queſtion. Certainly ſuch as call theſe Meetings tumultuous, as to break the Peace, offered the greateſt violence to common words, that can be well imagined; for they may as rightly ſay, ſuch perſons meet adulterouſly, thieviſhly, &c. as to affirm they meet tumultuouſly, becauſe they are as truly applicable; in ſhort, ſuch particulars, as are required to prove them ſuch Meetings in Law, are wholly wanting.

Sect. 9. [*To the diſturbance of the Peace*]

If the diſturbance of the Peace be but matter of form with the reſt, as is uſually pleaded; leave out this matter of form and then ſee what great matter will be left.

Certainly ſuch Aſſemblies, as are not to the breach and diſturbance of the peace, are far from being unlawful or tumultuary: but if the Peace be broken by them, how comes it the evidence was ſo ſhort? We cannot believe it was in favour of the Priſoners. This may ſhew to all the reaſonable World, how forward ſome are, to brand innocency with hateful Names, to bring a ſuſpition, where there was none deſerved.

Sect.

Sect. 10. [*That the ſaid* Penn *and* Mead *met by agreement before-hand made*]

But if Perſons that never ſaw each other, nor converſe together, neither had correſpondence by any other hand, cannot be ſaid to be agreed, to any action, before it be done; then the Priſoners were far from an Agreement; for they had never Seen, Converſt, nor Correſponded, directly, nor indirectly, before the Officers came to diſturb the Aſſembly: We well know how far they would have ſtretcht the word, *Agreement*, or *Conſpiracy*; but God who brings to nought the Counſels of the wicked, prevented their cruel deſigns.

Sect. 11. [*That* William Mead *did abet the ſaid* William Penn in *preaching*.]

No man can be ſaid to abet another, whilſt they are both unknown to each other, eſpecially in this caſe, where abetting follows agreeing, and agreeing ſuppoſes fore-knowledge. Nay, the word abet in Law ſignifies to *command, procure or counſel* a perſon, which *W. Mead*, could not be ſaid to do, in reference to *W. Pen*, they being ſo great Strangers one to another, and at ſo great a diſtance; for the Evidence proves that he was with Lieutenant *Cook*, and Lieutenant *Cook* ſwears he could not make his way to *W. Penn* for the Croud.

Sect. 12. [*That* W. Penn's *preaching and ſpeaking cauſed a great concourſe and tumult of People, to remain and continue a long time in the ſtreet.*]

But this is ſo improbable to believe, that the very nature of a Tumult admits of no ſuch thing as preaching; but implies a diſorderly multitude, where all may be ſaid to ſpeak, rather than any to hear.

Sect. 1. [*In contempt of the King and his Laws.*]

They are ſo far from contemning the King and his Laws, that they are obliged and conſtrained by their own principles, to obey every Ordinance of man for the Lords ſake, *but not againſt the Lord for mans ſake*, which is the queſtion in hand. Beſides, their continuance there, was not in contempt, but by the permiſſion of the chief Officer preſent, that came there by the Kings authority; nor is it for the honour of the King that ſuch perſons ſhould be ſaid to act in contempt of his Laws, as only meet to honour God and his Laws.

Sect. 3. [*And to the great disturbance of the King's peace.*]

It is far from disturbing and breaking the Kings peace for men peaceably to meet to worship God; for it is then properly broken and invaded when force and violence are used, to the hurt and prejudice of Persons and Estates; or when any thing is done that tends to the stirring up of Sedition, and begetting in people a dislike of the civil Government: But that such things are not practised by us in our Assemblies, either to offer violence to mens Persons and Estates, or to stir up People to Sedition, or dislike to the civil Government, is obvious to all that visit our Assemblies.

Sect. 3. [*To the great terror and disturbance of the Kings leige people and Subjects, and to the evil example of all others in the like case offending, contrary to the Kings peace, his Crown, and Dignity.*]

Were these so black Crimications as true as they are wretchedly false, we should give as just an occasion, to loose our Liberties, as our cruel Adversaries, are ready to take any to deprive us unjustly of them. O! How notorious is it to all sober people, that our manner of life is far from terrifying any; and how absurd to think that, naked men (in the generality of their conversation known to be harmless and quiet) should prove a terror or disturbance to the people; certainly, if any such thing should be in the time of our Meetings, it is brought with the cruelty and barbarous actions of your own Souldiers; they never learned by our example to bear, hale before Magistrates, fine, and imprison for matters relating to Gods Worship; neither can they say, we are their presidents, for all those *Adulterous, Prodigal, Lascivious, Drunken, Swearing*, and *Prophane acts, they daily commit, and esteem rather occasion of brag and boast, then sorrow and repentance*: No, they need not go so far, they have too many (God Almighty knows) of their own Superiors for their example.

Sect. 4. But we can never pass over with silence, nor enough observe the detestible juggle of such Indictments, which we require all *English and Conscientious men* to mind, as they value themselves in the like occasions. How little a grain of fact was proved, yet how spatious an Indictment was made? had it related to the evidence, the bulk had been excusable; but when it only swelled with malicious scaring Phrases, to suggest to the people, that they were the meerest Villains, the most dangerous Persons, and designing mutually the subversion of the Law, and

breach

breach of the Peace, to the terrifying of the people, &c.

Who can choose but tell them of their Romance-Indictment, that is so forged, as it truly merits another against it self. This they childishly call *Form*; but had an *Italian* or other Stranger been in Court, he would have judged it matter of fact, as thinking it unworthy of a Kings Court, to accuse men in terms, not legally, truly, or probably due to the fact, they really had committed; as well as that no Court would practise it, but that which loved to deprive men of their Liberties, and Lives, rather than to save them; *Nolens Volens*.

Sect. 5. Had their cruelty and juggle ended here it self, they would have spared us the pains of any further observation. But that which we have to add, on the Prisoners behalf, renders their actions so abominable, in the sight of Justice, that all honest and ingenious hearts must needs abhor their base snares.

They tell the Jury, *That being but Judges of fact only they were to bring the Prisoners in guilty* (that is, of the fact) *at their peril, and it was the part of the Bench, to Judge what was Law*; So that if the Jury had brought them in *Guilty*, without further additional explanation (though intentionally they meant only of the fact proved by evidence) yet the Bench would have extended it to every part of the Indictment, and by this impious delusion, to have perjured a well meaning Jury, and have had their barbarous ends upon the innocent Prisoners. But the Jury better understanding themselves brought in *Will. Penn* guilty of the fact proved, namely, *That he was speaking to some people met in* Gratious-Church-Street, *but not of an unlawful Assembly, so circumstantiated* (the mention of which stabbed their design of moulding the general answer of *guilty*, to their own ends, to the heart) nor indeed could they do otherwise; for as well the Jury as Prisoners, were denyed to have any Law produced, by which they might measure the truth of the Indictment, and guilty of the fact. But because the Recorder would or could not (perhaps 'tis so long since he read Law that he may have forgotten it) we shall perform his part, in shewing what is that *common Law of the Land*, which in general, he said, they were Indicted for the breach of, and which indeed if rightly understood, is the undoubted Birth-right of every Englishman; yes, the Inheritance of Inheritances, *Major Hæreditas venit unicuiq; nostrum a Jure, & Legibus, quam a Parentibus*. Cook Instit. 2. 56.

Sect. 6. All the various kinds or modes of Government, that are in the World, ſtand either upon *Will* and *Power*, or *Condition* and *Contract*; the firſt, rule by men, the ſecond, by Laws. It is our happineſs to be born under ſuch a conſtitution, as is moſt abhorrent in it ſelf, of all arbitrary Government, and which is, and ever has been, moſt choice and careful of her Laws, by which all Right is preſerved.

Sect. 7. All Laws are either Fundamental, and ſo immutable; or Superficial and ſo alterable. By the firſt we underſtand ſuch Laws, as injoyn men to be juſt, honeſt, vertuous; to do no wrong, to kill, rob, deceive, prejudice none; but to do, as one would be done unto; to cheriſh good, and to terrifie wicked men; in ſhort, univerſal Reaſon, *which are not ſubject to any revolutions, becauſe no emergency, time, or occaſion can ever juſtifie a ſuſpention of their execution, much leſs their utter Abrogation.*

Sect. 8. By Superficial Laws we underſtand, ſuch Acts, Laws, or Statutes, as are ſuited to preſent occurrences; and which may as well be abrogated, for the good of the Kingdom, as they were firſt made for it. For inſtance, thoſe Statutes, that relate to Victuals, Cloaths, and Places of Trade, &c. which have ever ſtood whilſt the reaſon of them was in force, but when that benefit, which once redounded, fell by croſs occurrences, they ended according to that old maxime, *Ceſſante ratione Legis, ceſſat Lex* but this cannot be ſaid of Fundamental Laws, *Till Houſes ſtand without their Foundations, and Engliſh man-kind wholly ceaſe to be*, which brings cloſe upon the point.

Sect. 9. There is not any Country, that has more conſtantly expreſt her care and deep ſolicitude, to the preſervation of her Fundamental Laws, than the *Engliſh* Nation; and though the evil of ſome particular times and perſons have endeavoured an utter Abolition of thoſe excellent Fundamentals, which we have before defined and defended from any juſt reaſon of revolution; yet God Almighty, who is always concerned to avenge the cauſe of Juſtice, and thoſe excellent good Laws, by which it is upheld, has by his providence befool'd their contrivances, and baffled their attempts, by bringing their deſigns to naught, and their perſons frequently to condign puniſhment and diſgrace, their Age no Antiquary living can aſſure us, unleſs they ſay, As old as Reaſon it ſelf; but our own Authors are not lacking to inform us, that the Liberties, Properties and Privileges of the *Engliſh* Nation are very ancient.

Sect. 10. For *Horn* in his *Mirror of Justice* (writ in *Edward* the first's time) *Fol.* 1. tells us, "That after God had abated "the Nobility of the *Britans*, he did deliver the Realm to men "more humble and simple, of the Countries adjoyning, to wit, "the *Saxons*, which came from the parts of *Almaign* to conquer "this Land, of which men there were forty Soveraigns, which did "rule as Companions; and those Princes did call this Realm *Eng-*"*land*, which before was named the greater *Britan*: Those, after "great wars, tribulations and pains, by long time suffered, did chuse "a King to raign over them, to govern the people of God, and "to maintain and defend their persons, and their good in quiet, "by the Rules of Right, and at the beginning they did cause him "to sware to maintain the holy Christian faith, and to guide his "people by Right, with all his power, without respect of per-"sons, and to observe the Laws: And after when the Kingdom "was turned into an Heritage, King *Alfred*, that governed this "Kingdom about an hundred seventy one years before the Conquest, "did cause the great men of the Kingdom to assemble at *London*, "and there did ordain for a perpetual usage, That twice in the "year, or oftner, if need should be, in time of Peace, they should "assemble at *London* in Parliament; for the Government of Gods "People, that men might live in quiet and receive right by cer-"tain usages and holy Judgments.

"In which Parliament (said our Author) the Rights and Pre-"rogatives of the Kings and the Subjects are distinguished and set "apart; and particularly by him expressed, too tedious here to insert, amongst which Ordinances we find, "That no man should "be imprisoned, but for a capital Offence. And if a man should "detain another in prison, by colour of right (where there was "none) till the party imprisoned died; he that kept him in Prison "should be held guilty of murder, as you may read, pag. 33. And pag. 36. "He is declared guilty of Homicide, by whom a "man shall die in prison, whether it be the Judges, that shall "too long delay to do a man right, or by cruelty of Goalers, or "suffering him to die by Famine; or when a man is adjudged to do "pennance, and shall be sur charged by his Goaler with Irons, or "other pain, whereof he is deprived of his life. And p. 149. That "by the antient Law of *England*, it was Felony to detain a man "in prison, after sufficient Bail offered; where the party was ap-"pealed of Treason, Murder, Robbery or Burglary, pag. 35. "None ought to be put in common prisons, but only such as were

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"ATTAINTED, or principally APPEALED or IN-
"DICTED of false or wrongful Imprisonment; so tender have
"the ancient Laws and Constitutions of this Realm been of the
"Liberty of their Subjects persons, that no man ought to be Im-
"prisoned, but for a Capital Offence, as *Treason*, *Murder*, *Rob-
"bery*, or *Burglary*.

Sect. 11. Nor is *Lambard* short in his excellent translation of the Saxon Laws, from *King Ina's* time, 712, to *Hen.* 3. 1100. In describing to us the great Obligation, and strong Condition the people were wont to put upon their Kings, *To observe the ancient Fundamental Laws, and free Customs of this Land*, which were handed down from one age to another. And in the 17th Chap. of *Edw.* the Confessors Laws, the mention there made of a Kings duty is very remarkable, That if he break his Oath, or performed not his Obligation (*Nec nomen Regis in eo constabit*.) The same *Lambard* further tells us, That however any may affirm *William* of *Normandy* to be a Conquerer, *He was received by the peoples as* Edwards *Successor, and by solemn Oath taken, to maintain unto them the same Laws that his Kinsman* Edward *the Confessor did*; this doctrine remained in the general, unquestioned, to the raign of King *John*, who Imperiously thought that *Voluntas Regis* and not *Salvus Populi*, was *Suprema Lex*, or the *Kings Will* was the *Supream Law* and not the *Peoples Preservation*; till the incensed Barons of that time, betook themselves to a vigorous defence of their antient Rights and Liberties, and learnt him to keep those Laws by a due restraint and timely compulsion, which his former invasion of them evidenced to the World he would never have done willingly.

Sect. 12. The Proposals and Articles of Agreement, with the Pledges given to Barons, on the behalf of the people by the King, were confirm'd in *Hen.* the 3ds. time his Son and Successor; *when the abused, slighted, and disregarded Laws, by his father*, were thought fit to be reduced to record, *that the people of* England *might not forever after be to seek for a written recorded Law, to their defence and security*; for *Misera servitus est ubi jus est vagum aut incognitum*; and so we enter upon the *Grand Charter* of *Liberty* and *Priviledge* in the Cause Reason, and End of it.

Sect. 13. We shall first rehearse it, so far as we are concerned, (with the Formalities of *Grant* and *Curse*,) and shall then say something as to the Cause, Reason, and End of it.

A

A Reherſal of the Material Parts of the Great Charter of England.

HEnry, *by the Grace of God, King of* England, *&c. To all Arch-Biſhops, or Earls, Barons, Sheriffs, Provoſts, Officers, and to all Bailiffs, and our faithful Subjects, who ſhall ſee this preſent Charter, greeting.* Know ye, That we unto the honour of Almighty God, and for the Salvation of the Soul of our Progenetors, and our Succeſſors, Kings of *England*, to the advancement of holy Church, and amendment of our Realm, of our meer and free will have given and granted *to all Arch Biſhops, &c. and to all Free-men of this our Realm*, thoſe Liberties under-written, to be holden and kept in this our Realm of *England* for evermore.

We have granted and given to all Free-men of our Realm, for us and our Heirs for evermore, thoſe Liberties under-written, to have and to hold to them, and to their Heirs, of us and our Heirs forenam'd.

A Free-man ſhall not be Amerced for a ſmall fault, *but after the quantity of the fault*: and for a great fault, *after the manner thereof* ſaving to him his Contenements or Free-hold. And a Merchant likewiſe ſhall be amerced, *ſaving to him his Merchandize*; and none of the ſaid Amercements ſhall be aſſeſſed, *but by the Oath of good and honeſt men of the Vicinage.*

No Free-man ſhall be taken, or impriſoned, nor be diſſeized of his Free-hold, or Liberties, or free Cuſtoms or be Out-lawed or exiled, or any other wayes deſtroyed; nor we ſhall not paſs upon him, nor condemn him, *but by lawful judgment of his Peers*, or by the Law of the Land; *we ſhall ſell to no man, we ſhall deny nor defer to no man either Juſtice or Right.*

And to all thoſe Cuſtoms, Liberties aforeſaid, which we have granted to be holden whithin this our Realm, as much as appertaineth to us and our Heirs we ſhall obſerve; and all men of this our Realm, as well Spiritual as Temporal, (as much as in them is) ſhall obſerve the ſame againſt all perſons in likewiſe. And for this our Gift, and Grant of thoſe Liberties, and for other contained in our Charter of Liberties of our *Forreſt* the Arch-Biſhops, Biſhops, Abots, Priors, Earls, Barons, Knights, Free-holders, and others our Subjects, have given unto us the fifteenth part of all their moveables; *And wee have Granted unto them on the other part, that neither we, nor our Heirs, ſhall procure or do any thing whereby the*

Liberties

Liberties in this Charter contained shall be infringed or broken; and if any thing be procured by any perſon contrary to the premiſes, *ſhall be had of no force nor effect*. Theſe being Witneſſes, *Boniface* Arch-Biſhop of *Canterbury*, &c. We ratifying and approving thoſe Gifts and Grants aforeſaid, confirm and make ſtrong all the ſame, *for us and our Heirs perpetually*, and by the tenor of thoſe preſents do renew the ſame willingly; and granting for us and our Heirs, that this Charter, in all and ſingular his Articles for evermore ſhall be ſtedfaſtly, firmly, and inviolably obſerved. *And if any Article in the ſame Charter contained, yet hitherto peradventure hath not been obſerved, nor kept, we will and by our Authority Royal command henceforth firmly they are obſerved.* Witneſs, &c.

The Sentence of the Curſe given by the Biſhops, with the Kings conſent, againſt the Breakers of the great Charter.

IN *the year of our Lord* 1253. *the third day of* May, *in the great Hall of the King at* Weſtminſter, *in the preſence, and by the conſent of the Lord* Henry, *by the Grace of God, King of* England, *and the Lord* Richard, *Earl of* Cornwall, *his Brother*; Roger Bigot, *Earl of* Norfolk *Marſhal of* England; Humphry, *Earl of* Hereford; Henry, *Earl of* Oxford; John, *Earl Warren*; *and other Eſtates of the Realm of* England: *we* Boniface, *by the mercy of God Arch-Biſhop of* Canterbury, *Primate of* England, F. *of* London, H. *of* Ely, S *of* Worceſter. E. *of* Lincoln, W. *of* Norwich, P. *of* Hereford, W. *of* Salesbury, W. *of* Durham, R. *of* Exceſter, M. *of* Carliſle, W. *of* Bath, E. *of* Rocheſter, T. *of St.* Davids, *Biſhops, apparelled in Pontificals, with Taper burning, againſt the Breakers of the Churches Liberties, and of the Liberties and other Cuſtoms of this Realm of* England; *and namely thoſe that are contained in the Charter of the common Liberties of* England, *and Charter of the* Foreſt, *have denounced Sentence of Excommunication in this form; by the Authority of Almighty God, the Father, the Son and the Holy Ghoſt, &c. of the Bleſſed Apoſtles* Peter *and* Paul, *and of all Apoſtles, and of all Martyrs, of bleſſed* Edw. *King of* England *and of all the Saints of Heaven, We Excommunicate and Accurſe, and*

from

from the benefit of our holy Mother the Church we ſequeſter all thoſe that hereafter willingly and maliciouſly deprive or ſpoil the Church of her Right; and all thoſe that by any craft, willingneſs, do violate, break, diminiſh, or charge the Churches Liberties, and free cuſtoms contained in the Charter of the common Liberties, and of the Foreſt *granted by our Lord the King to Arch-Biſhops, Biſhops, and other Prelates of* England, *and likewiſe to the Earls, Barons, Knights, and other Free-holders of the Realm; and all that ſecretly and openly, by deed, word or counſel do make Statutes, or obſerve them being made, and that bring in Cuſtoms to keep them, when they be brought in, againſt the ſaid Liberties, or any of them; and all thoſe that ſhall preſume to judge againſt them; and all and every ſuch perſon, before-mentioned, that wittingly ſhall commit any thing of the premiſes, let them well know that they incur the aforeſaid Sentence* ipſo facto.

A Confirmation of the Charters and Liberties of *England* and of the *Forreſt*, made the twenty fifth year of *Edward* the firſt.

Edward, by the Grace of God, King of *England*, Lord of *Ireland* Duke of *Guyan*, To all thoſe that theſe preſent Letters ſhall here or ſee, greeting. Know ye that we to the honour of God, and to the profit of our Realm, have granted for us, and our Heirs, and the Charter of Liberties, and the Charter of Forreſt, which were made by common aſſent of all the Realm, in the time of King *Henry* our father, ſhall be kept in every point, without Breach; and we will that the ſame Charter ſhall be ſent under our Seal, as well to our Juſtice of the Forreſt, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it ſhall be contained, that they cauſe the aforeſaid Charter to be publiſhed, and to declare to the people, that we have confirmed them in all points; and that our Juſtices, Sheriffs, Mayors, and other Miniſters, which under us have the Laws of our Land to guide, ſhall allow the ſame Charters pleaded before them in Judgment, in all their points; that is, to wit, the Great Charter, as the Common Law, and the Charter of our Forreſt, for the *wealth* of our Realm.

And we will that if any Judgment be given from henceforth contrary to the points of the Charter aforesaid, by the Justices, or by any other of our Ministers that hold Plea before them, against the points of the Charters, it shall be undone, and holden for nought.

And we will that the same Charters shall be sent under our seal to Cathedral Churches throughout our Realm, there to remain, and shall be read before the people two times by the year.

And that all Arch-Bishops and Bishops shall pronounce the Sentence of Excommunication against all those that by word, deed or counsel do contrary to the foresaid Charter, or that in any point do break or undo them; And that the said Curses be twice a year denounced and published by the Prelates aforesaid; and if the same Prelates, or any of them be remiss in the denunciation of the said Sentences, the Arch-Bishops of *Canterbury* and *York*, for the time being, shall compel and distrain them to the execution of their duties in form aforesaid.

The Sentence of the Clergy against the Breakers of the Articles above-mentioned.

IN the Name of the Father, the Son, and the Holy Ghost, Amen: Whereas our Soveraign Lord the King, to the honour of God, and of holy Church, and for the common profit of the Realm, hath granted for him, and his Heirs for ever, these Articles above written: Robert *Arch Bishop of* Canterbury, *Primate of all* England, *admonished all his Province once, twice and thrice, because that shortness will not suffer so much delay, as to give knowledge to all the people of* England *of these presents in writing: We therefore enjoyn all persons, of what estate soever they be, that they, and every of them, as much as in them is, shall uphold and maintain these Articles granted by our Soveraign Lord the King, in all points: And all those that in any point do resist or break, or in any manner hereafter Procure, Counsel, or in any wise Assent to Testifie or break those Ordinances, or go about it, by word or deed, openly or privily, by any manner of pretence or colour; we, the aforesaid Arch-Bishop, by our Authority in this writing expressed, do Excommunicate and Accurse, and from the Body of our Lord Jesus Christ,*

Christ, and from all the Company of heaven, and from all the Sacraments of holy Church do sequester and exclude.

We may here see, that in the obscureſt Times of ſottiſh Popery they were not left without a ſence of Juſtice, and the neceſsity of *Liberty* and *Property*, to be inviolably enjoy'd which brings us to the cauſe of it.

Firſt, Then cauſe of this famous Charter, was, as we have already ſaid, the Incroachments that were made by ſeveral Miniſters of precedent Kings, that almoſt become Cuſtomary, and which had near extinguiſht the free Cuſtoms due to Engliſh-men: How great care it coſt our Anceſtors, it unbecomes us to ignore, or by our ſilence to neglect; It was that *Yoak* and *Muzzle*, which failed not to diſable many raging Bears, from entring *the pleaſant Vineyard if Engliſh Freedoms*, that otherwiſe would not have left a fruitful Vine in being. Anon we may give the Reader an account of ſome, with their Wages as well as Works.

2d. The Reaſon of it, is ſo great, that it ſeems to be its own. It is the very *Image* and *Expreſſion of Juſtice*, *Liberty*, and *Property*; Points of ſuch eminent importance, as without which no Government can be ſaid to be reaſonable, arbitrary, and tyrannical. It allows every man that liberty God and nature have given him, and the ſecure poſſeſſion of his property; from the In-rode or Invaſion of his Neighbour, or any elſe of that conſtitution. It juſtifies no man in a fault, only it provides equal and juſt ways to have the Offender tryed, conſidering the malice of many Proſecutors, and the great value of Liberty and Life.

3d. The End of it was the moſt noble of any earthly projection, to wit, *The refixing of theſe ſhaken Laws*, held for many hundred years, by conſtant claim, that they living might be re-enſtated in their primitive liberty, and their poſterity ſecured in the poſſeſſion of ſo great a happineſs.

Amongſt thoſe many rich Advantages, that accrew to the free people of *England*, from this great Charter; and thoſe many confirmatory Statutes of the ſame, we ſhall preſent the Reader with the ſight of ſome few, that may moſt properly fall, under the conſideration and inquiry of thoſe preſent times, as found in our Common Law Books.

1ſt [*That every Engliſh man is born Free*]

2d [*That no ſuch free man ſhall be taken, attached, aſſeſſed, or impriſoned, by any Petition or Suggeſtion to the King or his Councel, unleſs by the Indictment and preſentment of good and lawful men, where*

ſuch as needs be done] 5 Edw. 3. chap. 9. 25 Ed. 3. chap. 4. 17 R. 2. chap. 6. Rot. Parl. 42 Ed. 3. Book 2 Inſt. 43.

3d [*That no ſuch Free-men ſhall be diſſeized of his Free-hold, or Liberties, or Free-Coſtoms. &c.* Hereby is intended, ſaith *Cook*, That *Lands, Tenements, Goods, and Chattels*] ſhall not be ſeized into the Kings hands contrary to this great Charter, &c. 43 *Aſſ.* pag. 12. 43 *Edward* 3. *Cook* 2. Inſtit. 32. Neither ſhall any ſuch Free-man be put from his Lively-hood without anſwer, *Cook* 2 Inſt. 47.

4ly [*That no Free-man ſhall be out lawed*] *unleſs he ſtroud, and hide himſelf voluntarily from the juſtice of the law.* 2 & 3 Phil. & Mar. Dier 114. 145.

5ly [*No Free-man ſhall be exiled*] *Cook* ſaid, There are but two Grounds, upon which any man may be exiled: Only by Act of Parliament (ſuppoſing it not contrary to the Great Charter) —— the other in cauſe of abjuration, for fellony by the Common Law, &c. *Cook* 2 Inſt. 47.

6ly [*No Free man ſhall be deſtroyed*, that is, He ſhall not be *forejudged of Life, Limb, Diſherited or put to torture, or Death*] Every Oppreſſion againſt Law, by colour of any uſurped Authority, is a kind of Deſtruction, and it is the worſt Oppreſſion that is done by colour of Juſtice. *Cook* Inſtitution 2. 48.

7ly [*That no free-man ſhall be thus taken, or impriſoned, diſſeized, out-lawed, exiled, or be deſtroyed of his Liberties, Free-holds, and Free Cuſtoms, but BY THE LAWFUL JUDGMENT OF HIS PEERS*] (vulgarly called *Jury.*) So that the Judgment of any fact or perſon, is by this Fundamental Law, referred to the Breſts, and conſciences of the Jury? it's rendred in Latine *PER LEGALE JUDITIUM*, that is Lawful Judgment; from whence it is to be obſerved, that the Judgment muſt have Law in it, and be according to Law, which cannot be where they are not Judges, how far the fact is legal, or the contrary; *Juditium quaſi Juris Dictum* [*The Voice of Law and Right*] And therefore is their Verdict not to be rejected, becauſe it is ſuppoſed to be the truth, according to their Conſciences: For *Verdict* from *vere dictum veritatis*, [*or a true Saying or Judgment*] 9 *Hen.* 3. 26. *Cook Inſt.* 1. 32. *Inſt.* 4. 207. *Cook* ſays, that by the word L E G A L E three things are implyed.

(1ſt) *That this was by Law, before the Statute, and therefore this Statute but declaratory of the antient Law.*

(2d) That their Verdict muſt be legally given; wherein is to

be

be obſerved. (1ſt) *The Jury ought to hear no Evidence, but in the hearing and preſence of the Priſoner.* (2d) *That they cannot ſend to ask any Queſtion in Law of the Judges, but in the preſence of the Priſoner, for,* De facto Jus oritur.

(3d) The Evidence produced by the Kings Councel, being given, *the Judges cannot collect the Evidence, nor urge it by way of charge to the Jury, nor yet confer with the Jury about the Evidence but in the preſence of the Priſoner,* Cook Inſt. 2. 49.

8th [*Or by the Law of the Land*] It is *a Synonimous* expreſſion, importing no more *than by the Tryal of Peers or a Jury*; for it is ſometimes rendered not (*or*) disjunctively, but (*and*) which is connectively, however, it can never ſignifie any thing contrary to the old way of trying by Peers; for then it would be connected to a contradiction.

Beſides, *Cook* well obſerves, that in the 4th Chap. of the 25th *Edw.* 3. *Per Legem Terræ,* imports no more than a Tryal by due proceſs, and writ Original at Common Law, which cannot be without a *Jury*; therefore, *Per Juditium parum & per Legem Terræ,* ſignifie the ſame priviledge unto the people, *Cook Inſt.* 2 pag. 50.

Thus have we preſented you with ſome of thoſe Maxims of Law, dearer to our Anceſtors, then life, *Becauſe they are the defence of the Lives and Liberties of the people of* England; it is from this 29th chap. of the Great Charter; *Great,* not for its Bulk, but the Priviledges in it: as from a ſpacious Root, that ſo many fruitful Branches of the Law of *England* ſprings, if *Cook* may be credited. But how *ſacred* ſo ever they have been eſteemed, and ſtill are by noble and juſt minds, yet ſo degenerate are ſome, in their proceedings, that conſcious to themſelves of their baſeneſs, they will not dare ſtand the touch of this great Charter, and thoſe juſt Laws grounded upon it, of which number we may truly rank the Mayor, and Recorder of *London,* with the reſt of their wiſe Companions, in their late Seſſions, at the Old Baily, upon the occaſion of the Priſoners.

Firſt, The priſoners were taken, and impriſoned without Preſentment of good and lawful men of the Vicinage, or the Neighbourhood, *but after a Military and Tumultuous manner, contrary to the grand Charter*

2d *They refuſed to produce the* Law *upon which they proceeded*; leaving thereby the Priſoners, *Jury,* and the whole Aſſembly in the dark.

3d

3d *They refuſe the Priſoners to plead*, and directly withſtood that great Priviledge, mentioned in the firſt Chap. 25 *Edw.* 1. *Where all Juſtices, Majors, Sheriffs, and other Miniſters that have the Laws of the Land, to guide them, are required to allow the ſaid Charter to be pleaded in all its points, and in all cauſes that ſhall come before them in Judgement*, for no ſooner did *William Penn*, or his Fellow-Priſoner, urge upon them the great Charter, and other good Laws, but the Recorder cryed, Take him away, Take him away, put him into the Bale-dock or Hole; from which the Recorder can never deliver himſelf, unleſs it be by avowing; *the Laws are not his Guide, and therefore does not ſuffer them to be pleaded before him in Judgment.*

4ly *They give the Jury their charge, in the Priſoners abſence, endeavouring highly to inſence the Jury againſt them.*

5ly The verdict (being given, which is in Law, DICTUM VERITATIS (*The voice of truth her ſelf*) becauſe not ſutable to their humor) *They did five times reject it, with many abuſive imperious, and menacing Expreſſions of the Jury*, (ſuch as no Preſident can afford us) as if they were not the only conſtituted Judges by the Fundamental Laws of the Land, *but meer Ciphers only to ſignifie ſomething behind their Figures.*

6ly Though the Priſoners were cleared by their Jury, yet were they contained for the non-paymtent of their Fines, laid upon them, for not pulling off their Hats, in which the Law is notoriouſly broken.

(1ſt) *In that no man ſhall be amerced, but according to the offence, and they have fined each forty Marks.*

(2d) *They were not merced by any Jury, but at the will of an inenſed Bench.*

Beſides there is no Law againſt the Hat, and where there is no Law there can be no Tranſgreſſion, and conſequently no legal Amercement or Fine, 9 *Hen.* 3. chap. 14. But how the Priſoners were trapaned into it, is moſt ridiculous on the ſide of the Contrivers, that finding their Hats off, would have them put on again by their Officers, to fool the Priſoners with a tryal of puting them off again, which Childiſh Conceit not being gratified they fined them the forty Marks apiece.

7ly Inſtead of excepting their Verdict as good in Law, and for the true deciſſion of the matter, according to the great Charter (that conſtitutes them proper Judges, and which bears them out with

with many other good Laws, in what they agreed to us a Verdict) the Court did moſt illegally and tyrannically fine and impriſon them, as in the Tryal was expreſt. And that notwithſtanding the late juſt reſentment of the Houſe of Commons, in Judge *Keelings* Caſe, were they reſolved, that the preſident and Practice of Fining, and Impriſoning *of Juries, for their Verdicts, were illegal.* And here we muſt needs obſerve two things.

1ſt That the Fundamental Laws of *England* cannot be more ſlighted, and contradicted in any thing (next Engliſh-mens being quite deſtroyed) than in not ſuffering them to have that equal *medium*, or juſt way of tryal, that the ſame Law has provided, *which is by a Jury.*

(2d) That the late proceeding of the Court, at the Old Baily, is an evident Demonſtration, that Juries are now but *meer Formality*, and that the partial charge of the Bench muſt be the Verdict of the Jury; *for if ever a Rape were attempted on the Conſcience of any Jury, it was there.* And indeed the ignorance of Jurors, of their authority by Law, is the only Reaſon of their unhappy cringing to the Court, and being ſcared into an *Anti-Conſcience Verdict*, by their lawleſs threats.

But we have lived to an Age, ſo deboiſt from all humanity and reaſon, as well as Faith and Religion, that ſome ſtick not to turn *Butchers to their own Priviledges, and Conſpirators againſt their now Liberties.* For however *magna Charta* had once the reputation of a ſacred unalterable Law, and few hardned enough, to incur and bear the long Curſe, that attends the Violaters of it, yet it is frequently objected now, that the benefits there deſigned are *but temporary*, and therefore lyable to alteration, as other Statutes are. *What Game ſuch Perſons play at may be lively read, in the attempts of* Dyoniſius, Phalaris, *&c. which would have will and Power be the peoples Law.*

But that the Priviledges due to *Engliſh* men, by the great Charter of *England*, have their Foundation in Reaſon and Law; and that thoſe new *Caſſandrian* wayes, to introduce *will* and *Power* deſerve to be deteſted by all perſons profeſſing ſence and honeſty, and the leaſt Allegiance to our *Engliſh* Government; we ſhall make appear from a ſober conſideration of the nature of thoſe Priviledges contained in that *Charter.*

(1) The Ground of alteration of any Law in Government (where there is no invaſion) ſhould ariſe from the univerſal *diſ-*

con-

commodity of its continuance, but there can be no disprofit in the continuance of *Liberty* and *Property*, *therefore there can be no just ground of alteration.*

(2) No one *English*-man is born Slave to another, neither has the one a right to inherit the sweat and benefit of the others labour (without consent) *therefore the Liberty and Property of an* English-*man*, *cannot reasonably be at the will and beck of another, let his quality and rank be never so great.*

(3) *There can be nothing more unreasonable than that which is partial*, but to take away the LIBERTY and PROPERTY of any (which are natural Rights) without breaking the Law of *nature* (and not of will and Power) is manifestly partial, *and therefore unreasonable.*

(4) If it be just and reasonable *for men to do as they would be done by*, then no sort of men should invade the Liberties and Properties of other men, because they would not be served so themselves.

(5) Where Liberty and Property are destroyed, there must alwayes be a state of force and war, which however pleasing it may be unto the *Invaders*, it will seem intolerable by the *Invaded*, who will no longer remain subject in all humane probability, than while they want as much power to free themselves, as their adversaries had to enslave them: *The trouble, hazards ill-consequences, and illegality of such attempts, as they have declined by the most prudent in all ages, so have they proved most easie to the most savage of all Nations, who first or last have by a mighty Torent freed themselves, to the due punishment and great infamy of their Oppressors*: such being the advantage, such the disadvantage which necessarily do attend the fixation, and removal of Liberty and Property.

We shall proceed to make it appear, that *Magna Charta* (as recited by us) imports nothing less than their preservation.

No Free man shall be taken, or imprisoned or be disseised of his Freeholds, or Liberties, or free Customs, or to be out-lawed, or exiled, or any other ways destroyed; nor will we upon him pass, nor condemn him, but by the lawful judgment of his Peers, &c.

A Free-man shall be amerced for a small fault, but after the manner of the fault; and for a great fault, after the greatness thereof, and none of the said amercement shall be assessed, but by the Oath of good and lawfull men of the Vicinage.

First, It asserts *English-men* to be free; *that's Liberty.*

Secondly

Secondly, That they have Free-holds, *that's Property.*

Thirdly, That Amercement, or Penalties ſhould be proportioned to the faults committed, *which is Equity.*

Fourthly, That they ſhall loſe neither, but when they are adjudged to have forfeited them in the judgment of their honeſt neighbours, accordiug to the Law of the Land, *which is lawful Judgment.*

It is eaſie to diſcern to what paſs the Enemies of the *great Charter* would bring the people of *England.*

Firſt, They are now Free-men; *but they would have them Slaves.*

Secondly, They have now right unto their *Wives, Children,* and *Eſtates,* as their undoubted property; *but ſuch would rob and ſpoil them of all.*

Thirdly, Now no man is to be amerced, or puniſhed, but ſuitable to the fault; *whilſt they would make it ſuitable to their revengeful minds, and unlimitted wills.*

Fourthly, Whereas the Power of Judgment lies in the Breſts and Conſciences of twelve honeſt Neighbours; *they would have it at the diſcretion of Mercenary Judges:* To which, we cannot chuſe but add, That ſuch diſcourſes manifeſtly ſtrike at this preſent conſtitution of Government; for it being founded upon the *Great Charter* (which is the antient Common Law of the Land) as upon its beſt Foundation; none can deſign the concealing of the *Charter,* but they muſt neceſſarily intend the extirpation of the *Engliſh Government,* for where the cauſe is taken away the effect muſt conſequently ceaſe. And as the reſtauration of our Antient *Engliſh* Laws, by the Great Charter, was the ſoveraign Balſom which cured our former Breaches, ſo doubtleſs will the continuation of it prove an excellent prevention to any future diſturbances.

But ſome are ready to object, *That the Great Charter conſiſting as well of Religious as Civil Rights, the former having received an alteration, there is the ſame reaſon, why the latter may have the like.*

To which we anſwer, That the reaſon of alteration cannot be the ſame, therefore the conſequence is falſe. The one being matter of Opinion, about Faith and Religious Worſhip, which is as various, as the unconſtant apprehenſions of men; but the other is matter of ſo immutable Rights, and Juſtice, that all Generations (however differing in their religious Opinions) have concentured and

agreed to the Certainty, Equity, and indiſpenſable Neceſſity of preſerving theſe Fundamental Laws; ſo that *Magna Charta* hath not riſen and fallen with the differing religious Opinions that have been in this Land, but have ever remained, as the ſtable Right of every individual *Engliſh* man, purely as an *Engliſh* man. Otherwiſe, If the civil Priviledges of the People, had fallen with the pretended Religious Priviledges of the *Papiſh Tyrany* at the firſt Reformation (as muſt needs be ſuggeſted by this Objection) our caſe had ended here, That we had obtained a Spiritual Freedom, at the coſt of a Civil Bondage; which certainly was far from the intention of the firſt Reformers and probably an unſeen conſequence, by the Objectors to their idle Opinion.

In ſhort, There is no time, in which any man may plead the neceſſity of ſuch an Action; as is unjuſt in its own nature, which he muſt unavoidably be guilty of, *That doth deface or cancel that Law by which the juſtice of Liberty and Property is confirmed and maintained to the people.* And conſequently, no perſon may legally attempt the Subverſion, or Extenuation of the force of the *Great Charter*, We ſhall proceed to prove them inſtances out of both.

1ſt. *Any Judgments given contrary to the ſaid Charter, is to be undone and holden for naught.* 25 Edw. *chap.* 2.

2d. *Any by word, Deed, or counſel, go contrary to the ſaid* Charter, *are to be excommunicated by the Biſhops; And the Arch-Biſhops of* Canterbury *and* York, *are bound to compel the other Biſhops to denounce Sentence accordingly, in caſe of their remiſſneſs, or neglect*; which certainly hath relation to the State rather than the Church; *ſince there was never any neceſſity of compelling the Biſhops to denounce Sentence in their own caſe, though frequently in the peoples.* 25 E. 1. c. 4.

3d. *That the great* Charter *and* Charter *of Forreſt, be holden and kept in all points, and if any Statute be made to the contrary, that is ſhall be holden for naught.* 43 Edw. 3. 1. Upon which *Cook*, that famous Engliſh Lawyer, ſaid, *That albeit, Judgments in the Kings Courts are of high regard in Law, and* Juticia *are accounted as* Juris Dicta, *yet it is provided by Act of Parliament, That if any Judgment be given contrary to any of the points of the great Charter, it ſhall be holden for naught.*

He further ſaith, *That upon the Statute of the* 25*th* Ed. 1. *chap.* 1. *That this great Charter and the* Charter *of Forreſt, are properly the Common Law of the Land, or the Law is common to all the People thereof.*

4ly.

4ly. Another Statute runs thus, *If any Force come to disturb the Execution of the Common Law, ye shall cause their Bodies to be Arrested, and put in Prison; Ye shall deny no man right by the Kings Letters, nor counsel the King any thing that may turn to his Damage or Disherison.* 18 Edw. 3. chap. 7. *Neither to deny Right by any command under the Great or Little Seal.* This is the Judges Charge and Oath, 2 E. 3. chap. 8. 14 Ed. 3. 14. 11 R. 2. chap. 10.

5ly. Such care hath been taken for the preservation of this Great Charter, that in the 25th of *Edw.* 1. It was enacted, *That Commissioners should issue forth, that there should be chosen in every Shire-Court, by the Commonalty of the same Shire, three Substantial Men, Knights, or other lawful, wise, and well disposed Persons, to be Justices, which shall be assigned by the Kings Letters Patents, under the Great Seal, to hear and determine (without any other Writ but only their Commission) such Plaints as shall be made upon all those that commit, or offend against any point contained in the aforesaid* Charters. 21 Edw. 1. chap. 1.

6ly. The necessity of preserving these *Charters* hath appeared in nothing more, than in the Care they have taken to confirm them; which as *Cook* observes, hath been by thirty two Parliaments *Confirmed, Established,* and *Commanded to be put in Execution,* with the condign punishment they had inflicted upon the Offenders. *Cooks Proem,* to the second Book of his Inst.

7ly That in the notable Petition of *Right*, many of these great Priviledges, and free Customs, contained in the aforesaid Charters and other good Laws, are Recited and Confirmed, 3 Car. 1.

8ly. The late King, in his Declaration at *New-Market*, 1641. acknowledged the Law *to be the rule of his Power*. By which he doubtless intended *Fundamental Laws*; since it may be the great advantage of Countries, sometimes to suspend the execution of *temporary Laws*.

Having so manifestly evidenced that *Venerable Esteem*, our Ancestors had of that *Golden Rule* (the Great Charter) with their deep solicitude, to preserve it from the defacing of Usurpation and Faction, We shall proceed to give an account of their just Resentment, and earnest Prosecution against some of those, who in any Age have adventured to undermine that antient Foundation, by introducing an Arbitrary way of Government.

1st. As Judicious *Lambard* reports in his *Saxon* Translation, *That the Kings in those dayes were by their Coronation Oaths obliged*

to keep the Antient Fundamental Laws and Cuſtoms of this Land (of which this great Charter is but declaratory) *ſo did* King Alfred (reputed the moſt famous Compiler of Laws amongſt them) *give this diſcovery of his Indignation againſt his own Judges, for Acting contrary to thoſe Fundamental Laws, that he commanded the execution of forty of them*; which may be a ſeaſonable *Caveat* to the Judges of our times.

2d. *Hubert de Burgo*, once Chief Juſtice of *England* having adviſed *Edw.* 1. in the eleventh year of his Reign, (in his Council holden at *Oxford*) *to cancel this Great Charter, and that of the Foreſt* was juſtly ſentenced according to Law, by his Peers, in open Parliament, when the Statute called CONFIRMATIONIS CHARTARUM was made; in the Firſt chapter thereof *Magna Charta* is peculiarly called the *Common Law*, 25 *Edw.* 1. chap 2.

3d. The *Spencers* (both Father and Son) for their Arbitrary Domination, and raſh, and evil Counſel to *Edw.* the 2d (by which he was ſeduced to break the great *Charter*) were baniſhed for their pains, as *Cook* relates.

4ly. The ſame fate attended *Treſillina* and *Belknap*, for their illegal proceedings.

5ly. The Breach of this Great Charter, was the Ground, that exemplary Juſtice, done upon *Empſon* and *Dudley*, whoſe caſe is very memorable in this point; *For though they gratified* Hen. 7. *in what they did, and had an Act of Parliament for their Warrant, made the eleventh of his reign; yet met with their due reward from the hands of Juſtice, that Act being againſt Equity and common Reaſon, and ſo no juſtifiable Ground or Apology, for thoſe frequent Abuſes, and the Oppreſſions of the people, they were found guilty of.* Hear what the Lord *Cook* further ſaith, concerning the matter, "There was an Act of "Parliament, made in eleventh year of King *Hen.* 7. which had a "fair flattering Preamble, pretending to avoid divers miſchiefs, "which were (1ſt.) *The High Diſpleaſure of Almighty God.* (2dly) *The great* Let *of the Common Law.* And (3dly) "*The great* Let *of the Wealth of this Land.* And the Purview of that "Act tended in the execution contrary, EX DIAMETRO, "viz. *To the high diſpleaſure of Almighty God, and the great* Let, "*nay the utter ſubverſion of the common* Law, *and the great* Let *of the Wealth of this Land*, as hereafter ſhall appear, the ſubſtance of which Act followsin theſe words.

That

THat from henceforth, as well Juſtices of Aſſize, as Juſtices of the Peace, in every County, upon information for the King, *before them made, without any Finding or Preſentment by Twelvemen*, ſhall have full Power and Authority, by their diſcretion, to hear and determine all Offences, as Riots, unlawful Aſſemblies, &c. commited and done againſt any Act or Statute made, and not repeal'd, &c. (*a Caſe that very much reſembles this of our own times.*)

"By pretext of this Law, *Empſon* and *Dudley* did commit, upon "the Subjects, unſufferable Preſſure and Oppreſſions; and there"fore this Statute *was juſtly, ſoon after the deceaſe of* Hen. 7. re"*pealed*, at the next Parliament, after his deceaſe, by the Sta"tute of the 1. Hen. 8. chap. 6.

"*A good Caveat to Parliaments, to leave all cauſes to be meaſured* "*by the Golden and Strait Metwand of the Law*; and not to the in"certain and crooked cord of diſcretion.

"It is almoſt incredible to foreſee, when any *Maxime or Funda*"*mental* Law *of this Realm is altered* (as elſewhere hath been "obſerved) *what dangerous inconveniences do follow*; which moſt "expreſly appeareth by this moſt unjuſt and ſtrange Act of the "eleventh of Hen. 7. for hereby not only *Empſon* and *Dudley* "themſelves, but ſuch Juſtices of Peace (corrupt men) as they "cauſed to be authorized, committed moſt grievous, and heavy "oppreſſions and exactions, grinding the faces of the poor Subjects "by penal Laws (be they never ſo obſolete, or unfit for the "time) by information only, without any preſentment, or tryal "by Jury, being the antient Birth-right of the Subject; but to hear "and determine the ſame by their diſcretions, inflicting ſuch penal"ty as the Statute not repealed impoſed. Theſe, and other like "oppreſſions and exactions by, or by the means of *Empſon* and "*Dudley*, and their Inſtruments, brought infinite Treaſure to the "Kings Coffers, whereof the King himſelf, at the end, with great

grief

"grief, and compunction repented, as in another place we have "obſerved.

"This Statute of the 11th of H. 7. we have recited, and "ſhewed the juſt inconveniences thereof; to the end that the like "ſhould never hereafter be attempted in any Court of Parliament; "and that others might avoid the fearful end of thoſe two Time-"ſervers, *Empſon* and *Dudley*, *Qui eorum veſtigiis inſiſtant, eorum "exitus per horeſcant.*

"See the Statute of 8 *Edw.* 4. chap. 2. a Statute of Liveries, "an Information, &c. by the diſcretion of the Judges, to ſtand "as an Original, &c. This Act is deſervedly repealed, vide 12 "*R.* 2. chapter 13. Puniſhment by diſcretion, &c. vide 5th of "*H.* 4. chap. 6. 8. See the Commiſſion of Sewers; diſcretion "ought to be thus deſcribed. *Diſcretio eſt diſcernere per Legem quid "ſit juſtum*; From whence three things ſeem moſt remarkable.

Firſt, The great Equity and Juſtice of the Great Charter, with the high value our Anceſtors have moſt deſervedly ſet upon it.

Secondly, The dreadful Maledictions, or Curſe, they have denounced upon the Breakers of it; with thoſe exemplary puniſhments they have not ſpared to inflict upon ſuch notorious Offenders.

Thirdly, So hainous a thing was it eſteemed of old, to endeavour an enervation or ſubverſion of theſe Antient Rights and Priviledges, that Acts of Parliament themſelves (otherwiſe the moſt ſacred with the people,) have not been of force enough to ſecure or defend ſuch perſons from condign puniſhment, who in purſuance of them, have acted inconſiſtent with our *Great Charter*. Therefore it is, that that great Lawyer, the Lord *Cook*, doth more than once aggravate the example of *Empſon* and *Dudley* (with perſons of the ſame rank) into a juſt caution, as well to Parliaments as Judges, Juſtices as inferior Magiſtrates, to decline making, or executing any Act, that may in the leaſt ſeem to infringe upon or confine this ſo often avowed and confirmed *Great Charter* of the Liberties of *England* ſince Parliaments are ſaid to err when they croſs it; the Obeyers of their Acts puniſhed, as Time-ſerving Tranſgreſſors; and that Kings themſelves (though enriched by thoſe courſes) have with great Compunction and Repentance left among their dying words their Recantations.

Therefore moſt notable and true it was, with which we ſhall conclude

clude this preſent Subject, what the King pleaſed to obſerve in a Speech to the Parliament, about 1662. (*viz.*) *The good old Rules of Law are our beſt ſecurity.*

The manner of the Courts behaviour towards the Priſoners, and Jury, with their many extravagant Expreſſions, muſt not altogether ſlip our obſervation.

(1ſt) Their carriage to the Jury outdoes all preſidents; they entertained them more like a Pack of Felons than a Jury of *honeſt men*, as being fitter to be try'd themſelves, than to acquit others. In ſhort, No Jury, for many Ages, received ſo many inſtances of Diſpleaſure and Affront, *Becauſe they preferred not the humor of the Court before the quiet of their own Conſciences, even to be eſteemed as perjured, though they had really been ſo, had they not done what they did.*

(2d) Their treatment of the Priſoners was not more Unchriſtian than Inhumane. Hiſtory can ſcarce tell us of one *Heathen Roman*, that ever was ſo ignoble to his Captive: What! *to Accuſe*, and not *Hear them*; to *threaten to Bore their Tongues, Gag and ſtop their Mouths, Fetter their Legs, meerly for defending themſelves, and that by the Antient Fundamental Laws of* England *too?* O Barbarous! Had they been *Turks* and *Infidels*, that carriage would have ill become a Chriſtian Court, *ſuch Actions proving much ſtronger diſſwaſives than Arguments to convince them, how much the Chriſtian Religion inclines men to Juſtice and Moderation above their dark Idolatry.* It is truly lamentable, that ſuch occaſion ſhould be given, *for intelligence to forreign parts*, where *England* hath had the reputation of a Chriſtian Country, *by the ill treating of its Sober and Religious Inhabitants for their conſcientious Meetings to worſhip God.* But, above all, *Diſſenters* had little reaſon to have expected this boariſh fierceneſs from the *Mayor* of *London*, *when they conſider his eager proſecution of the Kings Party under* Cromwell's *Government, as thinking he could never give too great a Teſtimony of his Loyalty to that new Inſtrument*, which makes the old Saying true, *That one Runagade is worſe than three Turks.*

Alderman *Bloodworth*, being conſcious to himſelf of his partial kindneſs to the *Popiſh Friars*, hopes to make an amends by his zealous proſecution of the poor *Diſſenters*; for at the ſame Seſſions he moved to have an Evidence (*of no ſmall quality*) againſt *Harriſon*, *the* Mendicant Fryar, ſent to *Bridewel* and whipt; *he was earneſt to have the Jury fined and impriſoned, becauſe they brought not the Priſoners guilty, when no Crime was proved againſt them, but peaceably worſhipping*

worshipping their God: Whence it may be easie to observe, *That Papists Friars, and Prelatical Persecutors are meer Confederates.*

But what others have only adventured to stammer at, the Recorder of *London* has been so ingenuous as to speak most plainly; or else, what mean those two fatal Expressions, *which are become the talk and terror both of City and Country*?

First, in assuring the Jury, *That there would be a* Law *next Session of Parliament, That no man should have the protection of the* Law, *but such as conformed to the Church*: Which should it be as true, as we hope it is false (and a dishonorable Prophecie of that great Assembly) *the* Papists *may live to see their* Marian *dayes out done by profest Protestants.*

But surely no *English-man* can be so sottish, as to conceive that his right to *Liberty* and *Property*, came in with his Profession of the *Protestant Religion*, or that his *natural and humane Rights are dependant on certain religious apprehensions*, and consequently he must esteem it a cruelty in the abstract, that Persons should be denied the benefit of those Laws which relate to Civil concerns, who by their deportment in Civil affairs, have no wayes transgrest them, but meerly upon an opinion of Faith and matter of Conscience.

It is well known that *Liberty* and *Property*, *Trade* and Commerce were in the World long before the Points in difference betwixt *Protestants* and *Dissenters*, as the common Priviledges of Mankind; and therefore not to be measured out by a conformity to this, or the other religious Perswasion, but purely as *English-men.*

Secondly, But we should rather choose to esteem this an Expression of *heat* in the Recorder, than that we could believe a *Londons Recorder* should say, an *English Parliament* should impose so much *Slavery* on the Present Age, and entayl it upon their own Posterity (*who for ought they know may be reckoned among the Dissenters of the next Age*) did he not encourage us to believe, it was both his *desire* and his *Judgment*, from that deliberate *Elogy* he made on the *Spanish-Inquisition*, expressing himself much to this purpose, *viz.* "Till now I never understood the reason of the Policy and "Prudence of the *Spaniards*, in suffering the *Inquisition* amongst "them: And certainly it will never be well with us till some thing "like unto the *Spanish-Inquisition* be in *England*. The gross malignity of which Saying is almost inexpressible: *What does this but justifie that Hellish design of the* Papists *to have prevented the first Reformation?* If this be good Doctrine, then *Hoggestrant*, the grand

brand *Inquisitor*, was a more venerable Person than *Luther* the Reformer. It was an expression that had better become *Cajetan* the *Popes Legate*, than *Howel*, *a Protestant Cities Recorder*. This is so far from helping to convert the *Spaniard* that it is the way to *harden him in his Idolatry*; when his abominable *cruelty* shall be esteemed Prudence, *and his most barbarous and exquisite torturing of Truth an excellent way to prevent Faction.*

If the Recorder has spake for no more than for himself, it is well; but certainly he little deserves to be thought a Protestant, *and a Lawyer*, *that puts both Reformation and Law into the Inquisition*: There being nothing more destructive of the Fundamental Laws and Liberties of *England*, and that noble design *of primitive Reformation, than the Arbitrary Power and Terrifying wracks of the Spanish-Inquisition.* And *doubtless the* supream Governours *of the* Land, *are highly obliged in* Honour *and* Conscience (in discharge of their Trust to God and the People,) to take these things into their serious consideration, as what is expected from them, by those who earnestly wish theirs and the Kingdoms safety and Prosperity.

Postscript.

The Copy of Judge *Keeling's* Case, taken out of the Parliament Journal.

Die Mercurij, 11th Decembris, 1667.

THe House resumed the Hearing of the rest of the Report, touching the matter of Restraints upon Juries; and that upon the examination of divers witnesses, in several Clauses of restraints put upon Juries, by the Lord Chief Justice Keeling; *whereupon the Committee made their Resolutions, which are as followeth.*

First, *That the Proceedings of the Lord Chief Justice, in the Cases unreported, are Innovations, in the Trial of men for their Lives and Liberties, and that he hath used an Arbitrary and Illegal power,*

which is of dangerous consequence to the Lives and Liberties of the people of England, *and tends to the introducing of an Arbitrary Government.*

Secondly, *That in the place of Judicature, the Lord Chief Justice hath undervalued, vilified, and condemned* Magna Charta, *the great Preservers of our Lives, Freedom, and Property.*

Thirdly, *That he be brought to Tryal, in order to condign punishment, in such manner as the House should judge most fit and requisite.*

Die Veneris, 13th Decembris, 1667.

Resolved, &c.

That the Presidents and Practice of Fining or Imprisoning Jurors for Verdicts, is Illegal.

Now whether the Justices of this Court, in their Proceedings (both towards the Prisoners, and Jury) have acted according to Law, to their Oaths and Duty, and to do Justice without partiality, whereby Right might be preserved, the Peace of the Land secured, and our Ancient Laws established: or whether such Actions tend not to deprive us of our Lives and Liberties, to rob us of (our Birth-right) the Fundamental Laws of *England*? and finally to bring in an Arbitrary and Illegal power to usurp the Benches of all our Courts of Justice, we leave the *English* Reader to judge?

Certainly, there can be no higher affront offered to King and Parliament, then the bringing their Reputations into suspition with their People, by the irregular actions of subordinate Judges: And no Age can parallel the carriage of this *Recorder*, *Mayor*, &c. Nor can we think so ignobly of the Parliament, as that they should d[illegible] less than call these Persons to account, who sail'd not to do it roo[illegible] ne less guilty, and of more repute, (to wit) Judge *Keeling*: For n[illegible] his behaviour give just ground of jealousie, that he intended an Inno[illegible]vation, and the introducing an Arbitrary Government, this *Rec[illegible]order* much more. Did Chief Justice *Keeling* say, *Magna Charta* w[illegible]s *Magna farta*; so did this *Recorder* too: And did Justice *Keeling* [illegible] Fine and Imprison Juries, contrary to all Law; so did this *Recorder* [illegible] also. In short there is no difference, unless it be, that the one was qu[illegible]tioned, and the other deserves it: But we desire in this they may [illegible]e said to differ, That though the former escap'd

punishment

punishment, the latter may not, who having a President before, did notwithstanding notoriously transgress.

To conclude, The Law supposes the King can't err, because it is willing to suppose, he always acts by Law (and *Voluntas Legis, est voluntas Regis*, Or the Kings Will is regulated by the Law) but it says no such thing of his Judges. And since they are oblig'd by Oath to disregard the Kings Letters (though under the Broad and Privy-Seal) if they any wise oppugn, or contradict the Law of the Land; and considering that every singular Action of an inferior Minister, has an ugly reference to the Supream Magistrate, where not rebuked; we can't but conclude, that both Judges are answerable for their irregularities, especially, where they had not a limitation of a Kings Letter, or command; and that the Supream Magistrate is oblig'd, as in Honour and Safety to himself, *Alfred*-like, to bring such to condign punishment, lest every Sessions produce the like Tragical Scenes of Usurpation over the Consciences of Juries, to the villifying and contemning of Justice, and great detriment, and prejudice of the good and honest men of this Famous and Free City.

FIAT JUSTICIA.

FINIS.